

**SECRETARY OF LABOR**  
**WASHINGTON, D.C. 20210**

The Honorable Hampton Dellinger  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW  
Suite 218  
Washington, D.C. 20036

Dear Mr. Dellinger,

The enclosed report, *Office of Inspector General (OIG) Report on Case No. S20140051673-J* is submitted in accordance with your referrals of Office of Special Counsel (OSC) File Nos. DI-24-000838 and DI-24-000870. The report presents the results of the DOL Inspector General's investigation into whistleblower allegations that continuous personal dust monitors (CPDM) are unsafe and MSHA failed to properly investigate safety issues with CPDMs, particularly related to a fire that occurred on August 27, 2021. In addition, the report addresses allegations regarding the stock ownership of Thermo Fisher Scientific (Thermo Fisher), the sole manufacturer of the MSHA-approved CPDMs, by the MSHA Deputy Assistant Secretary.

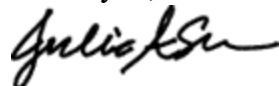
The OIG conducted an extensive investigation into the whistleblower allegations. The OIG found that MSHA had conducted an investigation into the August 27, 2021 fire and confirmed that it did start in the battery pack of a CPDM. The OIG confirmed that MSHA investigators were unable to determine the ignition source. Regarding the potential safety alert allegations, the OIG reported that MSHA did not notify the mining industry because of MSHA's inability to determine the cause of the fire and because the fire did not meet the criteria of an accident in accordance with 30 C.F.R. § 50.2.

Finally, the OIG confirmed that the MSHA Deputy Assistant Secretary (MSHA DAS) owns stock in Thermo Fisher and that the MSHA DAS was provided an advisory memo in 2023 about the potential ethical considerations of such ownership. The OIG noted that the MSHA DAS did not recuse herself from issues related to this company until April 2024. The OIG report also noted that the MSHA DAS was informed of potential issues associated with stock ownership. The OIG also highlighted that the MSHA DAS' stock ownership in Thermo Fisher goes back at least as far as the 2020 Reporting Period, which included holdings for both the MSHA DAS and her spouse.

On the personnel front, the Department has detailed the MSHA DAS to a position outside of MSHA while it conducts a review of any potential improprieties related to her stock ownership along with other pending matters.

The Department appreciates you bringing this matter to its attention.

Thank you,



JULIE A. SU  
Acting Secretary

REPORT OF INVESTIGATION



U.S. Department of Labor  
Office of Inspector General

<b>Case Title:</b>	OSC Referral DI-24-000838 and DI-24-000870 Patricia Silvey/Thermo Fischer CPMD	<b>Violations:</b>	<b>Written By:</b>	SA Douglas Bergner
<b>Case #:</b>	S20140051673-J		<b>Date Written:</b>	November 6, 2024
<b>Report Type:</b>	Investigative Memoranda		<b>Office:</b>	Office of Special Investigations (OSI)
<b>Subject Name:</b>	MSHA/Patricia Silvery		<b>Reviewed By:</b>	SAC Lisa Anderson
<b>Interview Date:</b>			<b>Approved By:</b>	SAC Lisa Anderson
<b>Distribution:</b> Case File; IG, Acting Secretary, MSHA, SOL, OSC				

**WARNING:** This information or document is the property of the Office of Inspector General (OIG), U.S. Department of Labor (DOL). This information/document is from DOL OIG's investigative files or systems, and is part of a Privacy Act system of records as defined in the Privacy Act of 1974, 5 U.S.C. 552a, as amended. This information/document is being provided in accordance with an applicable Privacy Act exception from disclosure restrictions and must be handled in accordance with the Privacy Act. Requests for access to or disclosure of this document, or for information derived from this document, by individuals or entities other than individuals in your organization with a need to have access in performing their official duties, must be referred to the Disclosure Officer, Office of Legal Services, Office of Inspector General, U.S. Department of Labor, email [FOIA.PrivacyAct@oig.dol.gov](mailto:FOIA.PrivacyAct@oig.dol.gov). You are not permitted to disclose this information/document or derivative information unless expressly authorized by the DOL OIG.

**SYNOPSIS**

This report of investigation was predicated on two Whistleblower disclosures to the Office of Special Counsel (OSC). These disclosures were then referred to the Acting Secretary of Labor who requested the Office of Inspector General (OIG) conduct an investigation concerning the allegations outlined in the OSC referral.

The first complainant (C 1) indicated that the continuous personal dust monitors (CPDMs) that MSHA requires all coal miners to wear are unsafe and MSHA failed to properly investigate the safety issues associated with the machines, including a fire on August 27, 2021. The second complainant (C 2) alleged MSHA's Deputy Assistant

Page 1 of 17

**DISCLOSURE** - This document contains neither recommendations nor conclusions of the Office of Inspector General (OIG), unless approved by designated Headquarter officials. It is the property of the OIG and is loaned to your agency; it and its contents are not to be distributed outside your agency.

**PATIENT MEDICAL INFORMATION** - This document may contain patient medical information protected under the Privacy Act and/or Health Insurance Portability and Accountability Act. Such Information may be accessed and used only if necessary for the performance of one's official duties and only to persons with a need-to-know. This information must be safeguarded and protected from inadvertent disclosure.

OIG - 110 (3/22)

Case #: S20140051673-J  
Date November 6, 2024  
Written:

Secretary (DAS) owns stock in Thermo Fisher Scientific, the sole manufacturer of the CPDMs. They further alleged that DAS led the 2014 rulemaking effort which resulted in the required use of the CPDMs and provided access to Thermo Fisher representatives beyond that provided to other vendors.

The specific allegations included:

- MSHA's failure to determine the cause of the CPDM fire that took place on August 27, 2021, at the Warrior Met No. 7 Mine in Brookwood, Alabama;
- MSHA's failure to alert the mining industry about the safety issue associated with CPDMs after the August 27, 2021, fire; and
- MSHA's DAS stock ownership in Thermo Fisher, as disclosed on their 2022 Form 278 filing.

## **METHODOLOGY**

Upon receipt of this complaint, the OIG's Office of Special Investigations (OSI) reviewed the referral documents, collected pertinent internal and external documents, and conducted interviews to obtain further information pertaining to the allegations.

## **INVESTIGATIVE FINDINGS**

### **CPDM Fire Investigation**

On September 1, 2021, MSHA Birmingham District requested technical assistance in the investigation of a Thermo Fisher Scientific PDM 3700 Personal Dust Monitor that reportedly caught fire while inside a pocket of a 3M nylon work vest.

MSHA conducted an investigation into the CPDM fire and determined the fire did start in the battery pack of the CPDM device that was inside a pocket of a 3M nylon work vest. The report confirmed that the fire was extinguished by a portable fire extinguisher in a working section of the mine. The District requested the Electrical Safety Division determine the cause of the fire. According to the report,

*"The Approval and Certification Center issued Approval No. 18-A140015-0 on December 4, 2014 to Thermo for the PDM 3700. The original approval included a battery pack comprised of 10 Panasonic (Sanyo) lithium-ion 18650 cells in a 2S5P configuration (two series-connected sets of five parallel-connected cells). In January 2020, Thermo added an alternate battery pack to the product's*

## CONTROLLED//SP-INV

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*approval. The alternate battery pack included 10 LG Corporation lithium-ion 18650 cells in a 2S5P configuration.*

*Thermo confirmed that the subject PDM 3700 was manufactured in October 2015. Thermo's May 2020 service records showed that they changed the battery pack to the LG 18650 lithium-ion cells, and installed an upgraded Digital printed circuit board (PCB). The upgraded Digital PCB contained an added Diode Daughter PCB that addressed a previous Quality Assurance (QA) field complaint PAR 113060.*

*The QA field complaint involved a battery backup coin cell not associated with the PDM battery pack. The coin cell located on the Digital PCB maintains the firmware of the PDM 3700. The investigation revealed that the area around the coin cell and the Digital PCB showed no signs of heat damage.*

*The service records indicate that the battery pack used in the subject PDM was the LG lithium-ion design."*

The investigations Findings and Discussion indicated,

*"The concentration of the heat and fire damage to the battery compartment and minimal heat and fire damage to the material in the electronic and mass transducer compartments lead to the conclusion that the initial stage of the fire occurred in the battery compartment."*

*"The single loose cell was one of 10 cells used in the PDM 3700. This cell's case ruptured along its length and its internal material was fire charred and friable. The length and diameter of this cell were consistent with the size of an 18650 type lithium-ion cell and could have been a cell manufactured by LG Corporation or Panasonic. The investigators could not determine from the evidence the initial ignition source involving this cell or the other nine cells from the PDM battery pack."*

. . .

*"The downloaded data from the day of the incident for the subject PDM 3700 did not show any unusual trends when compared to other data sets analyzed from the same unit. These other data sets were from normal mine use in the year prior to the fire. The last recorded line of data occurred at the presumed time of the fire (2:36 a.m. CT on August 27, 2021) and showed an error code of 'CPU RESET.' Thermo identified the 'CPU RESET' code as an error code that would occur when power was lost to the PDM"*

The report conclusions indicated,

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*“The concentration of the heat and fire damage to the battery compartment and minimal heat and fire damage to the material in the electronic and mass transducer compartments lead to the conclusion that the initial stage of the fire occurred in the battery compartment.*

*The investigators could not determine from the evidence the initial ignition source involving this cell or the other nine cells from the PDM battery pack.*

*The downloaded data from the day of the incident for the subject PDM 3700 did not show any unusual trends when compared to data sets from normal mine use in the year prior to the fire.”*

### **Whistleblower C1 Interview**

On May 1, 2023,<sup>1</sup> OSI conducted an interview of C 1. From September 12, 2021 – December 31, 2021, C 1 served as the acting supervisor (Branch Chief) in the Electrical Safety Division (ESD).

#### **CPDM Investigation**

While acting as Branch Chief in September 2021, C 1 gained knowledge of an issue with the CPDM after receiving a draft report about the August 27, 2021, fire at Warrior Met Coal Number 7 Mine located in Brookwood, Alabama. The report was from MSHA Mine Fire Investigators Electrical Engineer 2 (EE 2) and EE 1, who at the time were both Electrical Engineers in the Electrical Safety Division (ESD) at MSHA's Approval and Certification Center (A&CC).

C 1 indicated in their complaint disclosure and interview that they made comments to the authors of the report (EE 2 and EE 1) and (MSHA) managers that the overall report was vague, incomplete, and left questions unanswered. C 1 stated that they responded to EE 2 and EE 1 (assigned MSHA Investigators) with, *“a ton of questions”*, and copied manager Supervisory Electrical Engineer (SEE), with all of their concerns and questions. C 1 stated they, *“...put all those comments in an email around September of 2021. Uh - uh, didn't hear anything back about those. Um, later - and didn't bring up again. I guess I was naïve thinking MSHA management would, uh, naturally, you know, pursue the corrective actions against this, uh – uh, continuous personal dust monitor.”*

A search of C 1's emails for the time period after the fire produced one email which C 1 sent to EE 1 and EE 2 who they supervised. In the email, C 1 wrote:

---

<sup>1</sup> The OIG had received a complaint from Complainant 1 and had initiated an investigation prior to receiving the referral from OSC in May 2024.

## CONTROLLED//SP-INV

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*“...I think it is going to be near impossible to determine what set the cells into a thermal runaway condition if #2 ended up being the cells (e.g. impossible to tell if overcharged or from overheating). But hey, we aren’t forensic experts, maybe the outside of the case could show signs of deformation to know an outside heat source may have initiated the cells into thermal runaway???”*

Contrary to what C 1 stated in their interview, the email search did not locate an email from C 1 to EE 1 and EE 2 raising “a ton of questions.” However, the OIG has an email from C 1 to other MSHA supervisors dated November 2, 2021, in which they raised a number of questions about the report and attached a copy of the report in which they raised more questions. C 1 wrote: “Attached are my comments for the CPDM fire memo. I’ll let you guys sanitize and/or decide if you want to pass them on to [EE 1] and [EE 2].”

Furthermore, there were various emails where C 1 engaged in information sharing, advising, and discussions around the cause and source of the fire. In an email dated June 17, 2022, C 1 responded to an email with the other members of ESD, questioning what the office was going to do about looking into the cause of the CPDM fire and suggested that there needed to be more investigation. C 1 wrote,

*“While we’re on the topic of lithium batteries, do we have any plans of addressing the CPDM fire that appears to have started in the lithium battery compartment or to look into it further to figure out what started it? It doesn’t look good to have an I.S. permissible product appear to be the source of a fire which violates the definitions of both ‘permissible’ and ‘intrinsically safe’. I would think we should be looking hard at what the cause was, and modifying our rules to prevent it from happening again.”*

### Alert Memorandum

When discussing MSHA’s response to the fire and notification to the mining industry about the fire, C 1 stated,

*“...it seemed strange, uh, recently that, uh, MSHA put on their MSHA wa- on the MSHA... internet site about that, uh - uh, I don’t know if you heard it through the news, the, uh, new Palestine Ohio train derailment. They put on that as an alert to the mining industry about a hazard, you know, related primarily to another industry. But for some reason, are reluctant to put anything about this s- s- uh - uh, CPDM out there to the mining industry. Um, and despite this CPDM having an MSHA approval played on it, saying it’s safe and won’t cause a fire, it - it*

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*violated that. And it did cause a fire. And they don't even wanna alert the mining industry about that."*

When asked if they had alerted the mining industry, C 1 said,

*"That's - that's what I'm trying to do, or that's what I was trying to do with my, uh, internal emails and - and comments on the final report. I was trying to - trying to do that internally..."*

C 1 indicated that AS's goal for MSHA was to protect the health of the miners and it has been a problem for decades. C 1 stated,

*"...And I'm not an expert on the, uh, dust rule, but, uh - uh, it's - it's been a, uh, problem that - that, uh, has been going on for decades, as the, uh, dust rule has been, uh, kicked around by MSHA in the mining industry, as to, you know, how to solve problems because black lung is in inhalation of coal dust into the lungs of miners. That has been a, uh, health problem, uh, that's been publicized, and rightfully so. But, uh, you know, we should not be risking, uh - uh, fire explosion hazard to protect the health of - of miners. And we - we can certainly accomplish both. There's ways to - ways to make a safe monitor from a fire and explosion standpoint..."*

*Um, the - the continuous personal dust monitor actually gives real-time dust, uh - uh, numbers or real tust [sic]- real-time dust inhalation figures that the minor [sic] wearing the CPDM can see. And the mine can, uh - uh, make adjustments to, if - if they're seeing a lot of dust, you know, if - if that person's, you know, getting a lot of dust close to them. So it's a - it's a powerful instrument that's, uh, critical to the, uh, MSHA dust rule. And, to my knowledge, it's the only one that's, uh, MSHA approved. And, uh, looking up numbers, there's - there's a website, uh, that that manufacturer that makes it, Thermo Fisher. They're the manufacturer of the continuous personal dust monitor. Uh - uh, I found that it - it costs roughly \$20,000 per instrument..... So MSHA is making, uh, essentially, making mines through the, uh, dust rule to use an unsafe monitor that no longer meets the, uh, MSHA approval requirements, since it caught fire. So not only are they, uh - uh, sweeping it under the rug that it's a fire hazard, they're - they're, uh, continuing to let mines unknowingly use this unsafe product."*

### **Chief, Approval & Certification Center (CACC)**

On September 20, 2024, OSI interviewed CACC. CACC was asked about the allegations related to the CPMD fire outlined in the OSC referral and provided the following information.



Case #: S20140051673-J  
Date November 6, 2024  
Written:

CACC was asked about the CPDM fire that occurred on August 27, 2021, at the Warrior Met Coal No. 7 Mine. CACC stated at the time of the CPMD fire, they were the Accident Investigation Program Manager for MSHA's Technical Support. CACC stated if there was a serious non-fatal or fatal accident that occurred in the country (U.S.), and MSHA's Enforcement Division needed specialized assistance, they would request an investigator to conduct the investigation through them. CACC further stated:

*"So, uh, in, I think I was notified in August of 2021 that there had been, uh, a CPDM that caught fire at Warrior Met, and we were asked to evaluate, uh, the device to see if we could determine why it caught fire. Uh, this was a lab investigation, which means our, uh, investigator, uh, did not have to go to the mine, uh, and do any on-site investigating. Uh, the district was going to send, uh, the device to us, ship it to us. Uh, uh, as such, we got, uh, ended up being two engineers, electrical engineers from the Electrical Safety Division, uh, assigned to, uh, examine the unit, uhm, or I should maybe say the remains of the, the unit that burned..."*

CACC stated that the two electrical engineers that examined the CPDM were Electrical Engineer (EE 1) (Lead), who has since retired from DOL, and Technician (TECH), Electrical Safety Division, MSHA. CACC stated the fire itself did not actually meet MSHA's definition of an accident. CACC stated,

*"Yeah. Uh, so Part 50, 30 CFR Part 50, . . . the definition of an accident, uh, there are several items, but, uh, uh, the definition of a fire is, . . . it has to burn a certain amount of time, and I'm sorry, it's, it's 15 minutes or something. It's changed in the last few years. Uh, but the mine operator recognized that, you know, when the unit caught fire, uh, they reached out to MSHA, and I believe somebody, uh, they carried the, the CPDM outside, and, uh, somebody from MSHA picked up the unit there."<sup>2</sup>*

CACC was asked if the Lead Engineer was familiar with the CPDM prior to the investigation, CACC stated that they did not believe they were. CACC further explained that part of the mission of MSHA's Approval Certification Center is to evaluate certain types of equipment for mines to see if they could ignite an explosive concentration of methane or thermally ignite coal dust. CACC stated the CPDM had gone through the approval process around 2013 or 2014 and was approved for use. CACC said EE 1 was an experienced accident investigator and that was why they were selected as the lead investigator. Additionally, CACC stated TECH had worked on various approval

---

<sup>2</sup> 50 CFR § 50.2(h)(6) defines an accident as "[i]n underground mines, an unplanned fire not extinguished within 10 minutes of discovery; in surface mines and surface areas of underground mines, an unplanned fire not extinguished within 30 minutes of discovery."



Case #: S20140051673-J  
Date November 6, 2024  
Written:

processes for the CPDMs over the years so they were familiar, and that was why they were assigned to assist.

CACC was asked if MSHA was able to determine the cause of the CPDM fire, and they stated,

*"No, we were not. Uhm, unfortunately, it, it, it's often the case that, uh, uh, whatever the size of the equipment, whether it's a, you know, haul truck or anything that catches fire, uhm, as you can imagine, uhm, uh, a lot of the, the evidence is, is destroyed. In this case, I believe the battery pack for that unit had either 10 cells, 10 cells, or maybe 12."*

CACC further stated that it was a multi-cell pack and only one of the battery pack cells was not burned. After examination, they (MSHA) stated that the fire started within the battery pack; however, they could not determine what caused the CPDM to catch fire. CACC stated that they had requested to have the two miners who were operating the CPDM when it caught fire interviewed, but they were never interviewed. Additionally, CACC stated they could not determine if an external or an internal event caused the fire because of the external damage to the housing unit.

#### Alert Memorandum

CACC was asked if MSHA had a policy or a procedure to alert the mining industry if MSHA identified a safety concern such as the CPDM fire. They stated,

*"I don't know that there's a policy or a procedure. Uh, uh, kinda building on this example, if we did find that, uh, there were, uh, a series of, of fires, uh, with, with this device or, or anything else, uh, we ourselves would open a field complaint, uh, and we might, uh, uh, you know, say, hey, we, we need to put out an alert, uh, and, and notify, uh, users or industry as a whole, but, uh, I don't know that there's a policy. I think it's just something like when, uhm, when a signif... either a significant event or series of events occurs that, that indicate there's an issue, that's, that's when we do it."*

CACC further elaborated that MSHA could not determine the cause of the fire and that there was no evidence of similar fires or other occurrences with the CPDM. They further provided an example of when an alert memorandum was sent out in the past when three serious electrical incidents had occurred. CACC indicated in that case, an alert was sent out concerning electrical hazards.

CACC further related that when alerts are posted, they are featured on MSHA's website and they are also mailed/emailed to mine operators. Additionally, they stated that alerts are a collaborative process if one of the divisions within MSHA identifies a safety or health issue. CACC further stated that they were she was not sure who the approving

Case #: S20140051673-J  
Date November 6, 2024  
Written:

authority for release of alert memorandums would be. They were asked if anyone from MSHA HQ had tried to stop any negative information being released about the CPDM fire and they stated, "No."

CACC provided notes of a monthly meeting between MSHA, Thermo Fisher Scientific (Producer of the CPDM), and the National Institute for Occupational Safety and Health (NIOSH) which occurred several days after the CPDM fire. The notes indicate that information was shared about the fire and there was a discussion of next steps. During the meeting, DAE inquired if an alert to the industry would be necessary. At that time, it was recognized that they only had limited information and it could have been a "one off" event. There was also mention that MSHA may notify District Managers about the issue and make sure that the CPDMs are being worn instead of placed on roof bolters so that a fire would be detected earlier and the availability of fire extinguishers close to sampling areas was mentioned.<sup>3</sup>

### **DAS Interview**

On September 23, 2024, OSI interviewed DAS. DAS was asked about the multiple allegations outlined in the referrals and provided the following information.

DAS was asked about the CPDM fire that occurred on August 27, 2021. They stated there was an investigation conducted; however, the investigation could not determine the actual cause of the fire. DAS stated to the best of their knowledge, MSHA's Technical Support and Enforcement conducted the investigation.

DAS further related that they were not involved in the selection of the individuals nor did they know the investigators who conducted the investigation. C 1 alleged that DAS may have influenced the Acting Assistant Secretary during the investigation; however, the Acting Assistant Secretary has since left the agency and was not interviewed.

### **Alert Memorandum**

DAS was asked if MSHA or they were concerned because of the CPDM fire since miners are required to utilize the device when mining. They stated,

*"Yeah, I mean, I, I would say that there's always some concern when there's a fire, but I, I, I think that, that when it came to me, the determination was made, it, the recommendation jointly from Enforcement and Tech Support, that because they couldn't determine the cause of the fire that, that, that, 'cau... 'cause*

---

<sup>3</sup> A review of monthly meeting notes for the six months following the fire indicate that the question of whether an alert should be issued was not raised by anyone.

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*oftentimes we do, we would do a hazard alert, but they determined that there was nothing to inform the public of because of this fire..."*

DAS was asked if MSHA has a policy in place to alert the mining industry when there is a safety concern. They stated it was by a case by case basis. DAS further elaborated,

*"Uh, we generally have kind of a, uh, uh, kind of a group decision on it, and, and on, in this particular case, what happened is, uh, Tech Support made a recommendation. I, and I, if I recall now, Tech Support made a recommendation to Enforcement and Enforcement took that recommendation, and then they came to me and, and said that, that they, they agreed with it. I'm gonna say, I will say that, they agreed with it. And they came to me and said that they, that, you know, they did not recommend, jointly Tech Support and Enforcement did not recommend putting out a hazard alert on this."*

When asked if there was no alert put out because there was no cause of the fire identified, DAS stated, "That's what I thi... yeah, that was the general recommendation, yeah." DAS was asked if given the fact that the CPDMs are mandatory for use, would it have been beneficial to have pushed out an alert to let folks know that there had been a fire in the device even if they weren't able to determine the cause of the fire. DAS responded that in hindsight "[i]t doesn't ever hurt to give out information in the safety business, but to this day, I don't think we figured out what caused the fire."

DAS confirmed that MSHA safety alerts are posted and MSHA also has a subscription service that people subscribe to receive the alerts. DAS was asked if MSHA had sent safety alerts in the past (not in reference to the CPDM), to which they stated, "Yes..." DAS gave an example of when an alert would be sent out that included serious injuries or fatalities. DAS was then asked if MSHA sent out safety alerts when there are no fatalities or series injuries, which they stated,

*"Yes...That's, uh, for example, we've, we've seen, although some of these, now you're double, I'm double, some of these things have resulted in fatalities. Falls, when people fall from heights without wearing fall protection, we've put some out on falls when there was no fatality and no...but just a serious injury".*

DAS was asked how many safety alerts MSHA puts out yearly to the mining industry and they stated around 25.

## **Whistleblower 2- Thermo Fisher Scientific Stock**

In the OSC referral, C 2 reported that DAS owns stock in Thermo Fisher Scientific, the sole manufacturer of the CPDM. In addition, C 2 indicated that DAS led the 2014

Case #: S20140051673-J  
Date November 6, 2024  
Written:

rulemaking effort which resulted in the required use of the CPDMs, and provided access to Thermo Fisher representatives beyond that provided to other vendors.

### **Thermo Fisher Scientific**

According to their website, Thermo Fisher Scientific is a company that produces “...instruments, equipment, software, services and consumables” that “address a range of needs from sample, material characterization and chemical analysis to clinical diagnoses and biological-based therapeutics manufacturing”.<sup>4</sup>

In accordance with the MSHA’s 2014 Final Dust Rule, CPDM’s are required to be used by miners while conducting mining operations.<sup>5</sup> Thermo Fisher Scientific is the sole producer of PDM3700 Personal Dust Monitors (CPDMs).

### **OGE Form 278e- Executive Branch Personnel Public Financial Disclosure Reports**

OSI coordinated with the Department of Labor’s Office of the Solicitor (SOL) and obtained DAS’s Executive Branch Personnel Public Financial Disclosure Reports (OGE Form 278e) from 2020 through 2023.<sup>6</sup>

The review of the reports identified the following:

Beginning with the 2020 report and continuing through the 2023 report, DAS acknowledged owning stock in Thermo Fisher Scientific on their public financial disclosure forms (OGE Form 278).

#### **2020 OGE278 covering 2019**

In DAS’s 2020, OGE Form 278, DAS listed the Thermo Fisher Scientific stock shares in three separate lines. The first stock was listed as owned by DAS with a value of \$1,001-\$15,000.

The second and third lines on her 2020 disclosure, DAS listed stock in Thermo Fischer Scientific that their spouse owned with one valued as \$1,001-15,000 and the second as \$15,001-\$50,000.

---

<sup>4</sup> <https://corporate.thermofisher.com/us/en/index/about.html>

<sup>5</sup> [Federal Register :: Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors](#)

<sup>6</sup> OSI requested OGE Form 278’s from 2014-current, SOL is only required to maintain 6 years of the forms

Case #: S20140051673-J  
Date November 6, 2024  
Written:

The total amount of Thermo Fischer Scientific stock that DAS may have owned in 2019 was \$15,000, however adding their spouse's stock increased the potential for \$80,000 of total stock.

**2021 OGE278 covering 2020**

In DAS's 2021, OGE Form 278, DAS listed the Thermo Fisher Scientific stock shares in three separate lines. The first two stocks were listed as owned by DAS with a value of \$1,001-\$15,000 on one line, and a second line of stock valued at \$15,001-\$50,000.

In a third line on DAS's 2021 disclosure, DAS listed stock in Thermo Fischer Scientific that their spouse owned with a value of than \$15,001-\$50,000.

The total amount of stock that DAS may have owned in the 2021 year totaled from Thermo Fischer Scientific was \$65,000, however adding their spouse's stock increased the potential for \$115,000 of total stock.

**2022 OGE278 covering 2021**

In DAS's 2022, OGE Form 278, DAS listed the Thermo Fisher Scientific stock shares in three separate lines. The first two stocks were listed as owned by DAS with a value of \$1,001-\$15,000 on one line, and a second line of stock valued at \$15,001-\$50,000.

In a third line on their 2022 disclosure, DAS listed stock in Thermo Fischer Scientific that their spouse owned with a value of than \$15,001-\$50,000.

The total amount of stock that DAS may have owned in the 2022 year totaled from Thermo Fischer Scientific was \$65,000, however adding their spouse's stock increased the potential for \$115,000 of total stock.

**2023 OGE278 covering 2022**

In DAS's 2023, OGE Form 278, DAS listed the Thermo Fisher Scientific stock shares in three separate lines. The first two stocks were listed as owned by DAS with a value of \$1,001-\$15,000 on one line, and a second line of stock valued at \$15,001-\$50,000.

In a third line on their 2023 disclosure, DAS listed stock in Thermo Fischer Scientific that their spouse owned with a value of than \$15,001-\$50,000.

The total amount of stock that DAS may have owned in the 2023 year totaled from Thermo Fischer Scientific was \$65,000, however adding their spouse's stock increased the potential for \$115,000 of total stock.

Case #: S20140051673-J  
Date November 6, 2024  
Written:

## **Ethics**

The DOL Ethics office conducted a review of DAS's 2023 OGE Form 278, for calendar year 2022, and provided DAS with a standard advisory letter dated November 29, 2023, via email.

The advisory letter informed DAS that after review of their report, *"...we have identified assets or interests owned by you and/or your spouse, or dependent child that may create potential conflicts of interest for you."* In addition, the advisory letter included specific information on 18 U.S.C. § 208- Financial Conflict of Interest and listed a number of stocks DAS or their spouse owned in excess of the \$15,000 threshold. One of these stocks listed was the Thermo Fisher Scientific stock. The advisory letter further outlined their responsibility on impartiality towards these specific parties in which they had a financial interest and indicated,

*"If your holdings will not result in a potential conflict of interest, no further action is necessary. However, if you believe your financial interests create a potential conflict of interest with your official duties, you should immediately disqualify yourself from participation in any matter involving that interest. It would be prudent to document your action by providing a disqualification statement (or "recusal") to your immediate supervisor and the staff handling mail and phone calls in your office. If you do not believe disqualification is appropriate, alternative solutions such as divesting of the asset or requesting a waiver may be available."*

According to The Office of Ethics, on April 12, 2024, DAS contacted the SOL Ethics Office via phone requesting guidance concerning their holdings in Thermo Fisher Scientific. The Ethics office resent the November 2023 advisory letter via email to DAS and reminded them of the potential conflict of interest and their requirement to recuse themselves from particular matters involving Thermo Fisher Scientific, as they owned more than \$15,000 of their stock.

On April 12, 2024, DAS submitted a letter of recusal in reference to Thermo Fisher Scientific stock to their supervisor, MSHA's Assistant Secretary (AS) and copied DOL Ethics. The recusal letter indicated,

*"This is to inform you that, effective immediately, I recuse myself from participating in any matters affecting Thermo Fisher Scientific. Thermo Fisher Scientific manufactures the Continuous Personal Dust Monitor, the required device for sampling certain occupations/positions/areas in underground and surface coal mines. My recusal will cover not just making a decision, but also approval, disapproval, recommendation, investigation, or rendering advice in any matter involving Thermo Fisher Scientific."*

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*If there are any issues raised regarding Thermo Fisher, except for rulemaking, please refer them to Administrator for Enforcement (AE) or Deputy Administrator for Enforcement (DAE). If you have any questions, please let me know.”*

On April 15, 2024, the Ethics office confirmed to OSI that DAS did not respond to the 2023 advisory letter with a recusal<sup>7</sup>. The Ethics office further indicated DAS did not request any ethics guidance related to her stock in Thermo Fisher Scientific until they (DAS) reached out on April 12, 2024.

### **Securities and Exchange Commission**

Based on the fact that DAS was directly involved in the negotiated rulemaking process in MSHA that required the use of the CPDM devices by all miners, and the fact that they own stock in Thermo Fisher Scientific at least as early as 2019<sup>8</sup> the sole source manufacturer of the CPDM device, OSI requested assistance from The Enforcement Division of the Securities and Exchange Commission (SEC).

OSI consulted with SEC to determine when DAS first purchased the stock in Thermo Fisher Scientific to rule out potential insider trading. SEC indicated they could not determine when DAS purchased the stock in Thermo Fisher Scientific because it was purchased through a brokerage firm. The SEC declined to pursue further investigation of insider trading.

### **DOL Email Review in Reference to Thermo Fisher Scientific Stock**

OSI conducted a thorough review of DAS's official DOL government email, hard drive, shared drives and internet history in an attempt to obtain any pertinent information concerning stock ownership or direct correspondence with Thermo Fisher Scientific. This review did not find any pertinent information.

### **Thermo Fisher Scientific Stock**

DAS was asked about when they first purchased the Thermo Fisher Scientific stock listed on their OGE Form 278e's. DAS replied that they did not know, because their spouse had purchased it through their broker (Merrill Lynch). DAS further stated,

*“It was with Solomon Smith Barney, but I think it was Mer... Merrill Lynch at the time, and they (Spouse) didn't know we had, uh, Thermo Fisher. I didn't know we had the Thermo Fisher, uh, uh, uh, stock. Uh, one day, I went, and, and so they (Spouse) didn't know, the broker person. Now, obviously it was not purchased*

---

<sup>7</sup> This was during a phone call between OSI staff and SOL Ethics Office

<sup>8</sup> According to what DAS reported on their OGE Form 278's



## CONTROLLED//SP-INV

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*without their (Spouse) knowledge. Uh, the person probably told them (Spouse) at some point, but they (Spouse) didn't pay any attention to it ..."*

DAS was shown their 278s that showed the Thermo Fisher Scientific stock they had listed on their submission. DAS acknowledged that they had put it on the form however they stated they did not pay any attention to it. DAS confirmed that the amount of stock listed on all the forms was accurate.

DAS was shown a copy of a 2018 advisory email from SOL related to the stock they had listed on their OGE 278 form. Although Thermo Fisher Scientific was not one of the stocks listed on their OGE 278 at that time, they were advised that there may be a conflict of interest with her official duties. The email further indicated, *"In short, if you are involved in a matter that indicates any of the identified entities above, you should contact our office to determine whether or not a potential conflict or appearance of a conflict exists before proceeding..."* In response to that 2018 advisory email, DAS acknowledged via email, *"My work does not involve any of the organizations mentioned"*.

DAS was then shown a copy of the advisory email from November of 2023. In this email, the Ethics Office listed Thermo Fisher Scientific stock as one of the stocks they or their spouse owned which might cause a conflict of interest. The email states, *"You, and/or your spouse, or dependent child currently own the below listed stocks in excess of the \$15,000 threshold. Therefore, you may not rely on the de minimus exception for these assets."* DAS confirmed that they remembered the email. When asked why they did not respond to the email as they did in 2018, DAS stated, *"Well, for that, I issued, uh, I, I, well, I guess, uh, maybe I didn't do it right, but I issued a recusal letter."* When asked if they realized they had a conflict before or after they received that memo (letter), DAS replied, *"I didn't realize I had a conflict to be honest about it until after I received the memo."*

DAS was asked why they had reached out to the Ethics Office concerning the stock ownership in April of 2024, and not in November of 2023 when they received the advisory email, DAS stated, *"That I'm thinking about it. I think we got a congressional letter in here and somebody in the congressional letter mentioned that I owned Thermo Fisher stock"*.

When asked what process they went through to vet out their conflict of interest in relation to their stock, DAS stated,

*"Well, I look at any companies that may, for an example, I'll tell you starting off the bat, my spouse worked for a company that I had a conflict with when I came to MSHA 'cause they own mines, Exxon, so I, I have, that has been deeply embedded in my mind, my M-I-N-D mind until Exxon finally sold all of its mine, mining interest so there's no longer any conflict there with Exxon so for, when*

## CONTROLLED//SP-INV

Case #: S20140051673-J  
Date November 6, 2024  
Written:

*they (Spouse) first started working, for the longest time, they (Spouse) didn't buy Exxon stock for that very reason so I looked at the companies and I, you know, I might've inad... inadvertently, because that second list was so long, I might've inadvertently looked over that list, and I didn't know, to be honest, their (Spouse) broker bought Thermo Fisher so I didn't know the broker had purchased Thermo Fisher stock and, anyway, that's to the best of my knowledge".*

When asked again how DAS determines any conflict in her stock, they said, *"I, me, I do it, and I generally know what companies we deal with. I generally know that all the time I've been here."* DAS confirmed that once they were aware of the Congressional inquiry related to their stock, they went back through their emails and found the advisory email that was sent by SOL and went home and spoke to their spouse. When asked if that's when they contacted Ethics for guidance, DAS stated, *"Yeah. And I called, I, I then was not sure because of what, you know, because what Thermo Fisher did, and so I did, I called ... Associate Solicitor for Legal Counsel (ASOL) [SOL Ethics attorney] and asked them for advice and, and, and then I followed through on that advice."* DAS further stated:

*"...I don't mean, I, I'm kinda, a little bit upset with them (Spouse), because to be honest, they didn't fully know that the broker had bought Thermo Fisher's stock. They looked at me like I was crazy when I, and then they said, well, I'm sure I gave him permission, but They didn't have a clue when I said Thermo Fisher Scientific."*

DAS was asked if they deal with anything related to Thermo Fisher Scientific on a day to day basis and they stated they did not. DAS further elaborated that they do not attend meetings, nor have they had contact with the executives of the company. DAS stated the only time they sat in meetings with Thermo Fisher Scientific was when MSHA was working with them concerning MSHA's Dust Rule. DAS stated the last time they sat in a meeting with them was around 2015.

DAS provided a letter of recusal related to Thermo Fisher Scientific sent to the Assistant Secretary for Labor for Mine Safety and Health on April 12, 2024. A copy of this recusal letter was also sent to the Ethics Office in response to the advisory email that was issued in November 2023 and again in April 2024.

### **Summary**

MSHA conducted an investigation into the CPDM fire which determined the fire did start in the battery pack of the CPDM device. Although it was confirmed that the fire started in the battery compartment of the CPDM device, MSHA investigators were unable to determine the ignition source for the CPDM fire due to the extensive damage to the CPDM device itself.

## **CONTROLLED//SP-INV**

Case #: S20140051673-J  
Date November 6, 2024  
Written:

The investigation also confirmed that MSHA did not notify the mining industry of the CPDM fire because MSHA was unable to determine the cause of the fire. Further an alert was not issued because the fire did not meet the criteria of an accident in accordance with 30 CFR, § 50.2.

Finally, the investigation confirmed that DAS does own stock in Thermo Fisher Scientific, the sole source provider of the CPDM device that is mandatory for all miners. The evidence shows that DAS was provided an Advisory Memorandum in 2023 from the Ethics Office of the Solicitor after they listed owning more than \$15,000 in Thermo Fisher Scientific stock on their OGE 278 Public Financial Disclosure.

The investigation shows that DAS did not recuse themselves from issues related to Thermo Fisher Scientific until April 2024, after they received notice of a Congressional inquiry that was sent to the Department of Labor.

### **CLOSING**

OIG has concluded its investigation and is referring the investigative memorandum to the Department of Labor's Acting Secretary for review and transmittal to OSC.