

Congress of the United States
Washington, DC 20515

October 12, 2016

The Honorable Loretta E. Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Madam Attorney General:

On August 5, 2015, Environmental Protection Agency (EPA) employees and personnel under its supervision, working at the Gold King Mine in southwestern Colorado, caused the discharge of wastewater into the Animas River.¹ On August 12th, 2015 the House Oversight and Government Reform Committee (Oversight Committee) requested that the EPA Office of Inspector General (OIG) investigate the incident.² Shortly after that request the OIG announced it would open an investigation into EPA's role in the spill.³ In June of this year, the OIG wrote to the Committee informing it that a criminal inquiry had been opened related to this incident.⁴

On December 18, 2015, the House Committee on Natural Resources sent a letter to EPA's OIG raising serious questions on how the agency conducted its investigation of the spill and the Committee issued its own report on the EPA and the Department of the Interior's handling of this disaster on February 11, 2016.^{5,6}

¹ Bruce Finley, *Animas River: EPA's Colorado Mine Disaster Plume Flows West Toward Grand Canyon*, DENVER POST, Aug. 8, 2015, available at <http://www.denverpost.com/2015/08/08/animas-river-epas-colorado-mine-disaster-plume-flows-west-toward-grand-canyon/>.

² Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't. Reform, Hon. Cynthia M. Lummis, Chairman, H. Subcomm. on the Interior, and Hon. Ken Buck, Vice Chair, H. Subcomm. on the Interior to Hon. Arthur A. Elkins, Jr., Inspector General, U.S. Environmental Protection Agency (Aug. 12, 2015), available at <https://oversight.house.gov/wp-content/uploads/2015/08/2015-08-12-JC-Lummis-Buck-to-Elkins-EPA-OIG-Gold-King-Spill.pdf>.

³ Memorandum from Carolyn Copper, Asst. Inspector General, Office of Program Evaluation, U.S. Environmental Protection Agency to Shaun McGrath, Regional Administrator, Region 8 and Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response (Aug. 17, 2015), available at https://www.epa.gov/sites/production/files/2015-09/documents/newstarts_08-17-15_goldkingmine.pdf.

⁴ Letter from Carolyn Copper, Asst. Inspector General for Program Evaluation, U.S. Environmental Protection Agency to Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't. Reform (June 29, 2016), available at https://www.epa.gov/sites/production/files/2016-07/documents/response_to_chairman_chaffetz_gold_king_mine_status.pdf.

⁵ Letter from Hon. Rob Bishop, Chairman, H. Comm. on Natural Resources and Hon. Louie Gohmert, Chairman, H. Subcomm. on Oversight & Investigations to Hon. Arthur A. Elkins, Jr., Inspector General, U.S. Environmental Protection Agency (Dec. 18, 2015), available at http://naturalresources.house.gov/uploadedfiles/letter_to_epa_oig_12_18_15.pdf.

On October 11, 2016, the OIG held a conference call with Congressional staff on the status of this investigation.⁷ During the call, OIG stated that it had found evidence of criminal wrongdoing by the EPA. These included providing false statements in a criminal investigation and violation of the Clean Water Act.⁸ The OIG told congressional staff participants that it had referred these criminal findings to the United States Attorney for the District of Colorado. However, the OIG went on to say that the U.S. Attorney, on the same day, declined to prosecute these charges.

The Gold King Mine disaster resulted in three million gallons of wastewater containing toxic materials, such as lead and arsenic, pouring into the Animas River.⁹ The effects of the spill spread to the states of Colorado, New Mexico, and Utah. Damage from the spill also affected the Navajo Nation and Southern Ute Indian Tribe.¹⁰ Estimates have indicated that the cost of the spill could total as much as \$27.7 billion.¹¹ This is a serious incident and it deserves a serious response from the U.S. Department of Justice.

The Department of Justice, including the U.S. Attorney's Office for the District of Colorado, has aggressively pursued the discharge of pollutants into the nation's waters in violation of the Clean Water Act. In 2013, the U.S. Attorney for this District, in bringing a case investigated by EPA's Criminal Investigation Division, prosecuted a Longmont, Colorado, business owner for illegally discharging 1,000 gallons of sewage into a ditch connected to a local reservoir.¹² Both the individual and his company were each fined \$10,000 for the violation.¹³ Then-U.S. Attorney John Walsh stated "The defendant in this case now knows there are criminal penalties for his conduct."¹⁴ EPA's head of criminal enforcement in Colorado went on to say "This case shows that those who try to save a buck by cutting corners will be vigorously prosecuted."¹⁵

While the Longmont incident certainly deserved prosecutorial attention, it pales in comparison to the scope of EPA's Gold King Mine catastrophe. By not taking up the case, the Department of Justice looks like it is going easy on its colleagues in EPA. Its lack of action on these charges give the appearance of hypocrisy, and seem to indicate that there is one set of rules for private citizens and another for the federal government. The EPA disaster deserves the same level of accountability to which private citizens are held.

In order to assist the Committees, we ask that you provide the Committees with a briefing on the Department's decision not to take up the OIG's recommendation of criminal charges. Furthermore, research conducted by Oversight Committee staff indicates a large gap between the number of criminal referrals from inspectors general across the federal government and the number of prosecutions taken up by the Department. We request that the briefing take place no later than October 26, 2016.

⁶ MAJORITY STAFF, H. COMM. ON NATURAL RESOURCES, EPA, THE DEPARTMENT OF THE INTERIOR, AND THE GOLD KING MINE DISASTER (2016), *available at* http://naturalresources.house.gov/uploadedfiles/animas_report_with_branding_searchable.pdf.

⁷ Telephone Call with Patrick Sullivan, Assistant Inspector General for Investigations, Office of Inspector General, U.S. EPA (Oct. 11, 2016).

⁸ *Id.*

⁹ Bruce Finley and Tom McGhee, *Animas Mine Disaster: Arsenic, Cadmium, Lead Broke Water Limits*, DENVER POST, Aug. 10, 2015, *available at* <http://www.denverpost.com/2015/08/10/animas-mine-disaster-arsenic-cadmium-lead-broke-water-limits/>.

¹⁰ *EPA's Animas Spill Hearing Before the H. Comm. on Oversight & Gov't. Reform*, 114th Congress (2015), *available at* <https://oversight.house.gov/hearing/epas-animas-spill/>.

¹¹ *The Gold King Mine Environmental Disaster: Examining the Harmful Impact to Indian Country Hearing Before the S. Comm. on Indian Affairs*, 114th Congress (2015) (Statement of Douglas Holtz-Eakin, President, American Action Forum), *available at* <http://www.indian.senate.gov/sites/default/files/9.16.15%20Holtz-Eakin%20Testimony.pdf>.

¹² Press Release, U.S. Attorney's Office, District of Colorado, U.S. Dept. of Justice, Longmont Man and Business Sentenced for Illegally Discharging Sewage into The Union Reservoir (July 29, 2013), *available at* <https://www.justice.gov/usao-co/pr/longmont-man-and-business-sentenced-illegally-discharging-sewage-union-reservoir>.

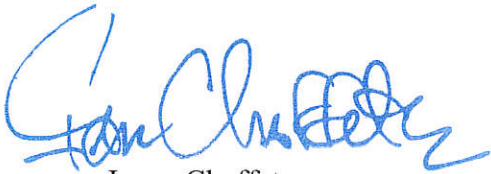
¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Please contact Ryan Hambleton of the House Oversight and Government Reform Committee (Majority) at (202) 225-5074 or Rob Gordon with the House Committee on Natural Resources at (202) 225-7107 with any questions about this request. Thank you for your attention to this 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