EVALUATING HEALTH AND SAFETY REGULATIONS IN THE AMERICAN MINING INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

OF THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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EVALUATING HEALTH AND SAFETY REGULATIONS IN THE U.S. MINING INDUSTRY

Wednesday, March 1, 2006
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 12:03 p.m., in room 2175, Rayburn House Office Building, Hon. Charlie Norwood [chairman of the subcommittee] presiding.

Present: Representatives Norwood, Keller, Marchant, Price, McKeon, Owens, Woolsey, Miller, and Holt.

Staff present: Byron Campbell, Legislative Assistant; Steve Forde, Director of Media Relations; Kevin Frank, Coalitions Director for Workforce Policy; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Legislative Assistant; Richard Hoar, Professional Staff Member; Kimberly Ketchel, Communications Staff Assistant; Jim Paretti, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Deborah L. Emerson Samantar, Committee Clerk/Intern Coordinator; Toyin Alli, Staff Assistant; Jody Calemine, Labor Counsel; Michele Evermore, Legislative Associate/Labor; Tylease Fitzgerald, Legislative Assistant/Labor; Peter Galvin, Senior Legislative Assistant/Labor; Tom Kiley, Communications Director; Rachel Racusen, Press Assistant; Marsha Renwanz, Legislative Associate/Labor; and Mark Zuckerman, Minority Staff Director/General Counsel.

Chairman NORWOOD [presiding]. A quorum being present, the Subcommittee on Workforce Protections will now come to order.

We are meeting today to hear testimony on evaluating health and safety regulations in the American mining industry. Under Committee Rule 12(b), opening statements are limited to the chairman and the ranking minority member of the subcommittee.

Therefore, if any other members have statements, they may be included in the hearing record.

Of course, we are delighted to have Mr. McKeon, our full chairman, here. And if the chairman wishes to make a comment, he certainly could.

With that said, I ask unanimous consent for the hearing record to remain open for 14 days to allow member statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

Today we have assembled an expert panel of witnesses to help the subcommittee evaluate the safety of American mining industry. This hearing will focus on the Mine Safety and Health Administration's, MSHA's, role in enforcing the Mine Safety and Health Act of 1977 and the responsibilities of mine operators and workers to ensure a safe working environment.

I want this oversight hearing to help identify the safety issues facing the mining industry today. This is a very important goal that every member of our subcommittee shares.

However, I do not want it to focus on politics, sloganeering, or partisan agenda. It is just simply too important. That will not help Congress improve mine safety and health. If you are here for the latter, I ask you please to reconsider before we begin.

A few weeks ago, the House honored the miners lost in the recent mine accidents in West Virginia and the mine rescue team members who risked their lives to try to bring them back to safety. I am moved by these families' losses and the bravery of the mine rescue teams. They will not be forgotten.

As I stated earlier, I want to ensure that the focus of this hearing is on preventing similar accidents from occurring and how to best protect miners, mine rescue teams and ultimately to prevent future tragedies.

With that said, we must keep in mind that the investigation of the West Virginia accidents is ongoing, and I do not want to prejudice that outcome.

Republicans and Democrats do not always agree on the major issues facing Congress, but I will bet you we all can agree that the United States must reduce its need for foreign oil.

In order to meet that goal, we are asking and turning to the mining industry to produce more in order to meet our domestic energy needs. This is especially true of the coal industry, which is already supplying 50 percent of our nation's electricity needs. But it does not stop simply at energy.

We also rely on domestic mining to support American infrastructure and production. In my home state of Georgia, for example, we mine a number of different minerals and ore that contribute to our nation's construction and consumer needs.

In fact, Georgia-based kaolin and china clay producers have an $830 million economic impact on my state every year. This is serious business, and it is important to make sure the folks that make this industry work are protected.

After all, we are asking men and women to go into mines every day to work in challenging and sometimes very dangerous conditions. Everyone in the industry recognizes the dangers, and public policy must ensure that the law and regulations in place are protecting these men and women.

We must also ensure that our laws take into account available technology and that laws are fairly enforced. This hearing is first in a series of hearings about mining and mine safety.

Several of our colleagues who are not members of our committee have requested time to address this subcommittee. I want to assure my colleagues that there will be ample opportunity to provide their thoughts to this subcommittee in an appropriate forum.

Because of the recently concluded joint meeting of Congress, our time today has been shortened. And at this time I ask unanimous consent to enter into the record a statement from Representative Capito. Hearing no one opposing, it is so ordered.

[Prepared statement of Mrs. Capito follows:

Prepared Statement of Hon. Shelley Moore Capito, a Representative in Congress From the State of West Virginia

Mr. Chairman, I want to thank you and the members of the Workforce Protection Subcommittee for holding this important hearing on mining health and safety regulations. West Virginia has experienced tragedy in our mines this year; already 16 miners have been killed at the Sago, Alma, and Boone County mines.

Coal mining is a vital part of West Virginia's economy and provides a majority of the electricity used nationwide. We must strive to make underground mining as safe as we possibly can.

Mining is a dangerous profession and unfortunately accidents will happen. Our health and safety regulations must be enforced vigorously to help prevent accidents and must include provisions for emergency communication, tracking, and oxygen devices.

West Virginia's congressional delegation introduced legislation that I hope will bring new safety regulations from MSHA. Communication systems and tracking devices are used in mines around the world, and we should make better use of these technologies in American mines.

The lives of dozens of Canadian miners were saved thanks to a chamber equipped with oxygen, food and water, and a communications device. At a minimum such chambers should be carefully examined to determine whether they could be effective in US coal mines.

We should also examine the requirements for mine rescue teams. When miners are trapped below the surface, rescue teams must be ready to begin the search as soon as it is safe to enter the mine. Given that underground mines vary drastically in design it is important that members of a mine rescue team be familiar with the mine.

I am pleased that the Mine Safety and Health Administration (MSHA) has announced emergency regulations to increase the emergency oxygen supplies below the surface in mines, require lifelines, and provide for faster notification of accidents. The emergency action must not be a final step, but a first step in evaluating the technologies, mine practices, and response to accidents that can prevent serious injuries or death in our nation's mines.

I encourage the subcommittee to continue to consider the opinions of miners, operators, and other stakeholders as the oversight process continues. These people work in the mines each day and know the details of its work. It is important that their voices are heard as we go forward.

Again, I commend the subcommittee for holding this important hearing and look forward to working further on regulations and legislation that will improve the safety of our mines.

Critics of MSHA have stated their belief that the agency is not doing enough to enforce the law. Some also believe that MSHA does not have enough money, enough manpower and resources to enforce the law. MSHA will have an opportunity to respond to those critics and to describe this year's budget proposal.

Today's panel will address many important policy issues as we begin to consider what, if any, changes could or should be made to improve the mine act. The policy debate has focused on breathable air, improved communications and better miner location technology. I urge our witnesses to broaden that discussion to any item that will work to improve mine safety.

I would like to thank all of you, our witnesses, for taking your time out from your busy schedule to testify before us today. And I truly very much look forward to your testimony.

Now, with pleasure, I yield to Mr. Owens for whatever opening statement he might wish to make.

[The prepared statement of Chairman Norwood follows:

Prepared Statement of Hon. Charlie Norwood, Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce

Today we have assembled an expert panel of witnesses to help the Subcommittee evaluate the safety of the American mining industry. This hearing will focus on the Mine Safety and Health Administration's (MSHA) role in enforcing the Mine Safety and Health Act of 1977, and the responsibilities of mine operators and workers to ensure a safe working environment.

I want this oversight hearing to help identify the safety issues facing the mining industry today. This is an important goal that every member of our subcommittee shares. However, I do not want it to focus on politics, sloganeering or a partisan agenda. That will not help Congress improve mine safety and health. If you're here for the latter, I'd ask you to kindly reconsider before we begin.

A few weeks ago the House honored the miners lost in the recent mine accidents in West Virginia and the mine rescue team members who risked their lives to try to bring them back safely. I am moved by these families' losses and the bravery of the mine rescue teams. They will not be forgotten.

As I stated earlier, I want to ensure that the focus of this hearing is on preventing similar accidents from occurring and how to best protect miners, mine rescue teams, and ultimately, to prevent future tragedies. With that said, we must keep in mind that the investigation of the West Virginia accidents is ongoing, and I do not want to prejudge that outcome.

Republicans and Democrats don't always agree on the major issues facing Congress, but we all agree that the United States must reduce its reliance on foreign oil. In order to meet this important goal, we are asking the mining industry to produce more in order to meet our domestic energy needs.

This is especially true of the coal industry, which is already supplying fifty percent of our nation's electricity needs.

But it does not stop at energy. We also rely on domestic mining to support American infrastructure and production. In my home state of Georgia, we mine a number of different minerals and ore that contribute to our nation's construction and consumer needs. In fact, Georgia-based kaolin and china clay producers have an $830 million economic impact on the state each year. This is serious business, and it's important to make sure the folks that make this industry work are protected.

After all, we are asking men and women to go into mines everyday to work in challenging and sometimes dangerous conditions. Everyone in the industry recognizes the dangers, and public policy must ensure that the law and regulations in place are protecting these miners. We must also ensure that our laws take into account available technology and that the laws are fairly enforced.

This hearing is the first in a series of hearings about mining and mine safety. Several of our colleagues, who are not members of the Committee, requested time to address the subcommittee. I want to assure my colleagues that there will be ample opportunity to provide their thoughts in the appropriate forum. Because of the recently concluded joint meeting of Congress, our time today has been shortened. At this time, I ask unanimous consent to enter into the record a statement from Representative Capito.

Critics of MSHA have stated their belief that the agency is not doing enough to enforce the law. Some also believe that MSHA does not have enough money, manpower, and resources to enforce the law. MSHA will have an opportunity to respond to those critics and describe this year's budget proposal.

Today's panel will address many important policy issues as we begin to consider what, if any, changes could be made to improve the Mine Act.

The policy debate has focused on breathable air, improved communication, and better miner location technology. I urge our witnesses to broaden the discussion to any item that will work to improve mine safety.

I would like to thank our witnesses for taking time out from their busy schedules to testify before us today. I very much look forward to your testimony.

Mr. OWENS. Thank you, Mr. Chairman.

I want to begin to acknowledging the front line mine workers from the coal mining states of West Virginia, Pennsylvania and Ohio who are seated in the audience today. You all had to take a

day off from work, and you traveled a far distance to attend this hearing, so we are delighted to have you.

Those of you who are coal miners, your families, your communities and your states will be directly affected not only by what we say here today, but also by what we do or fail to do here in Washington.

I expect all hard-working Americans and families to hold those of us who are elected officials fully accountable on this issue.

Mr. Chairman, I am pleased that this subcommittee has agreed to hold an oversight hearing on mine safety, a hearing that members on this side of the aisle requested in the immediate aftermath of the Sago Mine disaster, in which 12 miners were killed on January 4, 2006.

We are only 3 months into 2006, and already 21 mine workers have been killed on the job due to mine explosions, fires, roof collapses and other hazards. We must take immediate steps to stop this heavy death toll in our nation's mines, and the Mine Workers Safety and Health Administration must be at the forefront of these efforts.

I might add that recent press reports have indicated that in the Shoal Creek Mine in Alabama there have been several days now of mine explosions, and they have been forced to evacuate 140 workers to safety.

I ask unanimous consent to enter into the record two articles about the blast at the Shoal Creek Mines——

Chairman NORWOOD. So ordered.

[The information follows:]

(From the Associated Press, February 28, 2006)

Additional Blasts Rock Alabama's Biggest Mine, Now Closed

BY JAY REEVES

BIRMINGHAM—More underground explosions have rocked Alabama's largest coal mine since a blast last week forced the evacuation of scores of workers, and federal regulators said Tuesday it was unclear when production could resume.

No one has been hurt in any of the blasts, and the government said the severity of the explosions was unknown since the mine remains too dangerous for anyone to enter.

The Shoal Creek Mine, which recently underwent a court-ordered safety inspection, remained closed for a fifth day Tuesday following what regulators said were three blasts. The first occurred early last Friday, when about 140 workers were evacuated safely.

A spokeswoman with the Mine Safety and Health Administration, Amy Louviere, said two more explosions occurred Sunday and Monday, but no one was at risk because no one had been allowed to re-enter the mine after the first explosion.

Inspectors are checking the mine's air quality through ventilation shafts and bore holes, she said, and workers are pumping "a lot" of water out of the mine. The mine, located about 45 miles west of Birmingham, isn't safe enough for teams to enter and begin accessing and fixing damage, she said.

The operator of the mine, Drummond Co., issued a brief statement saying the initial explosion was not a "major event." It has not commented publicly on the subsequent explosions, and officials with the privately owned company did not return telephone calls seeking comment.

Officials with the United Mine Workers of America also failed to return calls.

Shoal Creek was among more than a dozen operations to undergo court-ordered safety inspections by the state in late January and early February after the union filed suit over lax oversight by the state.

The state said its inspection at Shoal Creek was incomplete because of time constraints in meeting the court-ordered deadline, and The Tuscaloosa News reported that records indicate state regulators did not check the area where the initial explosion occurred.

Shoal Creek is described by Drummond as Alabama's biggest coal mine and one of the largest in the nation. It averaged 820 employees last year and produced 2.2 million tons of coal.

(From the Birmingham News, March 1, 2006)

Another Explosion Rocks Coal Mine; Gas Eruptions Go On in Shoal Creek

BY RUSSELL HUBBARD

Explosions continue to ignite fires at the Shoal Creek mine, with the fiercest one yet happening Tuesday afternoon.

Monitoring equipment at the evacuated underground coal mine 45 miles west of Birmingham detected an explosion and fire about 2 p.m., said Thomas Wilson, health and safety representative of the United Mine Workers of America.

That is the fourth such methane-fueled blast since Friday at the Drummond Co. coal mine that reaches 1,200 feet underground.

Wilson said Tuesday's explosion caused carbon monoxide monitors to register more than 6,000 parts per million, six times the levels measured Friday when the mine was evacuated. That level is enough to cause death within 15 minutes to exposed humans.

"There is nothing else down there to make those readings shoot up like that but explosions and fire," Wilson said.

Attempts to reach Birminghambased Drummond for comment were unsuccessful. The company, the union and the federal Mine Safety and Health Administration are working at the mine near Adger to monitor conditions and restore the site.

The mine was evacuated in the early hours Friday after the first explosion and a roof fall. No one was injured. The mine employs 860 people and produced 3.1 million tons of coal last year. It was Alabama's third largest by volume of production in 2005.

103(k) Rule

The mine has been vacant and idle since Friday. The federal mine safety agency has invoked its 103(k) rule, which requires the mine operator to get permission before re-opening the site, agency spokeswoman Amy Louviere said.

"There has been some damage to the ventilation controls," Louviere said. "They are drilling holes and boring down to collect air samples."

Drummond said Friday the explosion was caused by an ignition of methane, a colorless and odorless combustible gas that often accompanies coal deposits.

Union official Wilson said next efforts might include piping a cement-like material into the mine to seal the area where the explosions are happening. That might make things safe enough for reclamation teams to descend and assess conditions directly.

Because the methane is hidden among tons of underground rock, it's impossible for the miners to cut it off. The gas is erupting unpredictably from the coal face, sparking the explosions and fires, Wilson said.

Of the three aspects of the "fire triangle"—fuel, oxygen and heat—controlling the oxygen level might be the best bet in this case, Wilson said.

"We have got to take the oxygen away," Wilson said. "This one keeps producing its own fuel, the methane."

Controlled, targeted flooding is also a technique that might interrupt the fire triangle, Wilson said.

Salvage Efforts

Some mines have burned for extended periods. In 1985, a Jim Walter Resources mine in Tuscaloosa County went through a series of explosions, said Wilson, who has been traveling the country working on such cases for more than 20 years.

"We've seen it before, but not in recent years," he said.

There is no way to estimate how long it might take to salvage the mine, he said. "We just don't know how much damage is occurring down there."

The mine's water pumping equipment was shut off when electricity was cut to reduce fire risk. That means the periodic natural flooding the mine experiences has been unchecked for more than four days.

Louviere, of the mine safety agency, said burning mines sometimes become too compromised to ever re-open.

"It doesn't happen often, but it has happened," she said. "Some mines have become so flooded and damaged that they are unrecoverable."

Mr. OWENS [continuing]. In Alabama.

Mr. Chairman, our government is a government for the people, by the people, of the people. That means all the people, not just the people who own property, not just the mine owners, not just the millionaires.

The security and safety and protection of all the citizens is the duty and the obligation of the government. Extreme exploitation and exposure of the workers is as much our concern as any other, so we are here today to talk about whether or government is doing its duty and living up to its obligation to protect all of our citizens.

This poses a significant challenge to MSHA, because the Bush administration has severely undermined safety enforcement over the past 5 years. Rather than selecting professionals with expertise in mine worker safety and health issues for leadership positions in MSHA, President Bush appointed a person with mining industry management experience.

This action was akin to turning the clock back to the 1950s and 1960s, when staffers from the Bureau of Mines and Interior, people whose primary concern was the level of coal mine production, were in charge of worker safety.

But Congress had clearly intended to change that mind set by enacting the Federal Coal Mine Health and Safety Act of 1969 and, subsequently, the Federal Mine Safety and Health Act of 1977. These acts established MSHA within the Department of Labor. We need to return at once to strict adherence to both the letter, the intent and the spirit of the 1969 and 1977 mine safety laws.

On top of placing industry insiders in key MSHA posts, this administration also started requesting officially with each annual budget submission funding cuts and staff reductions for MSHA. The MSHA staffers most heavily downsized between 2001 and 2005 have been those in coal enforcement.

We have a chart which depicts the coal enforcement staffing cutbacks between 2001 and 2005. The graph on this chart features a downward slope which is both steep in appearance and depressing. It symbolizes a drop-off in coal enforcement.

The high point of the chart is 1,233 staffers in 2001. The low point is a coal enforcement staffing for 2005 at 1,043 staffers. Overall, 190 positions have been cut in coal enforcement at the very time that the division needs to reinvigorate if it is to safeguard mine workers.

The Bush administration also requested steep cuts in overall funding for MSHA between 2001 and 2006. This is depicted on a second bar chart which tracks MSHA funding requests in real dollar terms from 1998 to 2006. The bar chart paints this picture for us by comparing the official budget requests for each year with the previous year's enacted budget.

As you can see, annual increases in MSHA's budget were requested from 1998 through 2001 during the Clinton years. In contrast, annual reductions were requested from 2002 to 2006 during the Bush years.

Moreover, since 2001, the Bush administration has either withdrawn or delayed some 18 safety regulations under MSHA—18. Our third chart lists these rules, a number of which could have af-

forded particularly important protections to mine workers in some of the recent disasters.

For example, a pending rule to improve mine rescue teams, which would have given mine operators assistance in having two such teams on site, was withdrawn on September 4, 2002. When the Sago Mine disaster struck, it took more than 5 hours to get the rescue teams in place.

Another regulation to ensure the flame resistance of conveyor belts was withdrawn on July 15, 2002. The Bush administration adopted a dangerous rule in its place, permitting conveyor belt air entries to be used as the sole ventilation source for working places in the mine. In January of this year, the Aracoma Alma Mine's conveyor belt caught fire and killed two workers.

Mr. Chairman, as a result of these staff reductions in coal enforcement, overall funding cutbacks in MSHA, and withdrawal of important safety rules, a lot of work is now required to strengthen protections for mine workers.

To ensure that that happens, Congressman Rahall has introduced a bipartisan bill, H.R. 4695. On behalf of the entire West Virginia delegation and others on this committee, I ask you to schedule a markup on that bill as soon as possible and also ask unanimous consent that a statement by Congressman Rahall be included in this hearing record.

Chairman NORWOOD. So ordered.

[The prepared statement of Mr. Rahall follows:]

Statement of U.S. Rep. Nick J. Rahall, II
before the Subcommittee on Workforce Protections
March 1, 2006

Chairman Norwood and Ranking Member Owens, I would like to express my appreciation as well as that of many who reside in the Nation's coalfields for your holding this hearing today.

It is our hope, and prayer, that this oversight hearing on mine safety will quickly be followed by legislative action. On February 1st, the West Virginia Congressional Delegation introduced H.R. 4695, the "Federal Mine Safety and Health Act of 2006." As the unfortunate incidents earlier this year at the Sago, Melville and two other mining operations in West Virginia underscored, current Mine Safety and Health Administration regulations and policies are woefully inadequate on several fronts, such as their neglect of advances in technologies that could be deployed to increase the survival of coal miners involved in emergency situations.

It is unfortunate, but true, that as technology enabled our Nation to mine much more coal in much less time with far fewer workers, advances that could improve the conditions for workers in the mines were tragically shoved aside. Mine safety funds were cut. Federal enforcement became lax. Indeed, less than three years ago I stood on the floor of the House of Representatives and offered an amendment to halt the Administration's attempt to allow a fourfold increase in the amount of respirable dust in underground coal mines. A regulation, I would note, that would have resulted in more coal miner deaths due to the crippling disease known as black lung.

In my view, it is time, indeed, far past the time, that we harken back to the true letter, intent and spirit of the landmark Federal Coal Mine Health and Safety Act of 1969, as amended by the Federal Mine Safety and Health Act of 1977. That is the purpose of the West Virginia Delegation's legislation which I commend to your attention for consideration. Thank you.

"Federal Mine Safety and Health Act of 2006" (H.R. 4695)

<u>Enhanced Rescue Requirements</u>

(1) Better notification – Require underground coal mine operators to expeditiously provide notification of any accident where rescue work is necessary, and insure that the Mine Health and Safety Administration has a system to immediately receive these notifications.

(2) Rapid emergency response - Require operators to maintain mine rescue teams whose members who are familiar with the workings of the coal mine as well

as to have a coordination and communications plan between the teams and local emergency response personnel. In addition, the Secretary is directed to issue regulations to address the adequacy of rescue team training and member qualifications, the type of equipment used by the teams, the use of contractor teams, as well as liability and insurance issues.

(3) Emergency air and communications - Require operators to maintain emergency supplies of air and self-contained breathing equipment at strategic locations within the mine for persons awaiting rescue. Operators would also be required to maintain independent communications systems to the surface.

(4) Emergency tracking - Require operators to implement an electronic tracking device for rescue and recovery, and each person in an underground coal mine would be provided with a portable device to communicate with the surface and mine rescue teams.

Penalties

Requires the Labor Secretary to prescribe a minimum civil penalty of up to $10,000 for a violation of the health and safety standards in instances where an operator displays "negligence or reckless disregard" of the standards. The Secretary is also directed to establish a penalty of up to $100,000 in instances where an operator fails to expeditiously provide notification of any accident where rescue work is necessary.

Prohibited Practices

The bill reaffirms the existing statute's prohibition on using entries which contain conveyor belts to ventilate work areas in underground coal mines. When mines are arranged this way, and a fire breaks out on a belt, the belt tunnel can carry flames and deadly gases directly to the miners' work area, or to vital evacuation routes.

Technological Advances

An Office of Science and Technology Transfer would be established within the Mine Health and Safety Administration to conduct research and development to advance new technologies for underground coal miner health and safety.

Miner Ombudsman

The position of Miner Ombudsman would be established within the Labor Department's Office of Inspector General to ensure that coal miners may confidentially report mine safety and health violations.

Mr. OWENS. In closing, I want to welcome Mr. O'Dell, who directs Occupational Health and Safety at the United Mine Workers of America. As we will hear from Mr. O'Dell, who spent some 20 years as an hourly employee in coal mines, we know how to prevent these tragic mine workers' deaths.

I look forward to hearing his testimony and the testimony of the other witnesses. Thank you.

Chairman NORWOOD. Thank you very much, Mr. Owens. And you know, just so we are fair and balanced, it should probably be said that the MSHA budget has risen 40 percent over the past decade, and mine safety funding has increased $30 million under President

Bush. I just think that probably ought to be in the record, because it is true.

Subcommittee members, we have a very distinguished panel of witnesses today, and I would like to introduce them to you. First, we have Mr. Robert Friend, who is acting deputy assistant secretary at the Mine Safety and Health Administration.

Mr. Friend joined MSHA in 1978 as a metal/non-metal inspector. He worked in several MSHA regions before joining headquarters. He is a certified mine safety professional, as recognized by the International Society of Mine Safety Professionals.

Mr. Friend, you are most welcome.

Next, we have Mr. Ray McKinney. He is the administrator for the Coal Mine Safety and Health at the Mine Safety and Health Administration. Mr. McKinney joined MSHA in 1976 as a coal mine inspector. He is a certified mine safety professional. And what I like, he was a coal miner and a member of a mine rescue team prior to joining MSHA.

In addition, he has received the Department of Labor's Valor Award for the safe rescue of a miner trapped in Scotia Coal Company's Upper Taggart Mine.

And we certainly congratulate you on that.

Next we have Mr. Dennis O'Dell. He is the administrator for the Occupational Health and Safety for the United Mine Workers of America. Mr. O'Dell worked in all aspects of coal mining before becoming a member of the UMWA leadership.

Mr. O'Dell is an instructor at the National Mine Academy in Beckley, West Virginia and was appointed to the Mine Safety and Health Research Advisory Committee in 2006. He has been a full-time representative of the UMWA for 11 years.

Lastly, we are happy to have Mr. Bruce Watzman—is vice president of safety and health and human resources for the National Mining Association. Mr. Watzman holds a master's degree in environmental health management. He has worked for the National Mining Association and its predecessor, the National Coal Association, since 1980.

Mr. Watzman is a recognized expert in the field and was also recently appointed as a member of the mine safety and health research advisory committee.

A quick note: Although both Mr. Friend and Mr. McKinney are appearing before us today, only Mr. Friend will present an opening statement. Both gentlemen, however, will be available for your questions.

And as you see, committee, we have a very distinguished group.

And we are here to learn from you gentlemen today.

I want to remind the members, however, that we will be asking questions of the witnesses after all four of you testify. In addition, Committee Rule 2 imposes a 5-minute limit on all questions.

Gentlemen, I think all of you are familiar with the timers. I just do not like cutting people off at all. It makes me ill at ease. If you can try to sort of see that caution light come on, we really would appreciate it.

And with that, Mr. Friend, you are recognized now for 5 minutes.

STATEMENT OF HON. ROBERT FRIEND, ACTING DEPUTY ASSISTANT SECRETARY, MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Mr. FRIEND. Thank you, Mr. Chairman. Mr. McKinney and I are pleased to appear before you today to discuss the work of the Mine Safety and Health Administration. We appreciate your interest in MSHA and the opportunity to share with you the current activities in which the agency is engaged.

In recent years, the mining industry has experienced historic lows in injury and fatality rates. In 1978, the first year MSHA operated under the new mine act, 242 miners died in mining accidents. Last year there were 57 fatalities, 22 at coal mines and 35 at metal and non-metal mines.

From 2000 to 2005, the mining industry as a whole experienced a 33 percent decrease in fatal accidents nationwide, a 42 percent decline in coal mines. The coal mine lost time injury rate has declined one-third over the past 5 years. These are important and compelling statistics that put the current state of mine safety and health in this country in its proper perspective.

MSHA inspectors vigorously enforce the law. With the support of the entire agency, last year MSHA issued the highest number of citations and orders since 1994.

In recent years, in order to gain compliance, MSHA has increased its use of withdrawal orders, which is a powerful tool that requires miners to be withdrawn from areas affected by a violation. Many times this also results in lost production.

During the last 5 years, the number of withdrawal orders increased 20 percent over the previous 5 years. MSHA issued more withdrawal orders in both 2004 and 2005 than in any year since 1994.

It is important to note that any MSHA violation must be abated within a specified time frame and before any penalty is assessed. In the case of withdrawal orders, the hazard must be abated before miners are allowed to return to work in the area or activity affected by that order.

Recent statistics show our strong enforcement record very strongly. From fiscal year 2000 to fiscal year 2005, total citations and orders issued by MSHA at all mines increased five percent. Total citations and orders issued at coal mines increased by 19 percent. Total significant and substantial citations and orders issued at coal mines increased by 13 percent.

However, I want to make something clear. And diligently and vigorously as MSHA inspectors enforce the law, MSHA does not have the authority to preemptively close entire mines because of the number or the frequency of violations. We do not have that authority under the mine act.

While we stand by our record, we know there is more to do. We are now conducting thorough investigations of the recent tragic accidents at Sago and Alma Mines. We are determined to learn lessons from those accidents that can help us to continue to improve mine safety and health.

We are happy to respond to your specific questions about these two incidents, keeping in mind that this is an ongoing investigation

and it would be inappropriate at this stage to speculate on the root causes of those accidents.

Although there have been great improvements in mine safety and health, as long as there is one fatality or one ill or injured miner, we know we have more work to do. We must continually seek new and improved accident-prevention measures, and we must give miners who are involved in accidents every chance for survival.

Some of the areas we are working on to achieve that goal include new rulemaking and mine technology evaluations.

I want to make sure that people know that MSHA will hold a public meeting on Monday, March 13 at the National Press Club in Washington, D.C. to get comments on two specific topics covered in our request for information. Those are technology used for underground communications and tracking of underground miners.

We are also evaluating the efficacy and large-scale permissibility of existing advanced underground mine communications and tracking systems currently used in Australia and in a small number of U.S. coal mines.

MSHA is reexamining mine rescue issues, and we are working jointly with mine industry representatives to standardize mine emergency procedures related to mine rescue organization, lines of communication and lines of authority.

I would like to turn now to the question of MSHA resources. I have seen recent reports that cite the decrease in the number of mine enforcement personnel as evidence of an indifferent attitude toward mine safety and health.

I want to assure you that MSHA currently has sufficient resources to conduct the inspections mandated by the mine act. The number of federal mine enforcement personnel has remained relatively constant over the last 10 years, from a low of 902 in 1998 to a high of 986 in 2003.

We have shifted some resources into the metal and non-metal area as the workload has changed between these two industry sectors. While the number of coal enforcement personnel declined 15 percent over the last 10 years, the number of coal mines decreased 24 percent during that same time period.

The president has requested sufficient funding levels for MSHA to conduct the required inspections of the mine, requesting an increase in the agency funding every year.

I want to conclude with something that bears repeating time and again, something that everyone should understand. Every single employee at MSHA is dedicated heart and soul to the agency's mission.

Every employee of the MSHA lives and breathes for the day when there are no fatalities, no injuries and no occupational illnesses among the country's miners. Every employee at MSHA strives every day to reach that goal, sending every miner in this country home to family and friends at the end of every shift, every day.

We will not rest until that happens. Thank you.

[The statement of Mr. Friend follows:]

Prepared Statement of Robert M. Friend, Acting Deputy Assistant Secretary of Labor for Mine Safety and Health

Mr. Chairman: I am pleased to appear before you today to discuss the ongoing work of the Mine Safety and Health Administration (MSHA). MSHA works diligently to promote mine safety and health. We want nothing more than to send every miner home safely at the end of every shift, every day.

We have been moving closer to that goal every year. In recent years, the mining industry has experienced historic lows in injury and fatality rates. In 1978, the first year MSHA operated under the new Mine Act, 242 miners died in mining accidents. Last year, there were 57 mining fatalities, 22 at coal mines and 35 at metal and nonmetal mines. From 2000 to 2005, the mining industry experienced a 33% decrease in fatal accidents nationwide—with coal mines seeing a 42% decline. The coal mine lost-time injury rate declined one-third over the last five years. These are important and compelling statistics one must consider in placing current mine safety and health conditions in a proper perspective.

MSHA inspectors vigorously enforce the law—with the support of the entire agency, top to bottom. Last year, MSHA issued the highest number of citations and orders since 1994. In recent years, MSHA increased its use of "withdrawal orders" to gain compliance with the standards. This is a powerful enforcement tool as withdrawal orders require miners to be removed from the area affected by the violation, often resulting in disruptions to production. The number of withdrawal orders increased 20% over the last five years when compared to the previous five years. MSHA issued more "withdrawal orders" in both 2004 and 2005 than in any year since 1994. It is important to note that any MSHA violation must be abated within a specified time frame before the penalty is assessed. In the case of withdrawal orders, the hazard must be abated before miners are allowed to work in the area or activity affected by the hazard.

The statistics show our strong enforcement record very clearly. From FY2000 to FY2005:

- Total Citations and Orders issued by MSHA at all mines increased by 5% (119,183 to 125,161)
- Total Citations and Orders issued at coal mines increased by 19% (56,870 to 67,756)
- Total "Significant and Substantial" Citations and Orders issued at coal mines increased by 13% (23,586 to 26,717)
- MSHA enforcement personnel have significantly increased the issuance of withdrawal orders to coal mine operators who exhibit an unwarrantable failure to comply with the regulations. Unwarrantable failure orders are one of the most severe enforcement actions inspectors can take and in each of the last two years MSHA inspectors issued more such orders than in any year in the last ten years.

While enforcement activity and the number of miners went up from 2000 to 2005, the number of coal mines fell. There were 2,124 coal mines in 2000 and 1,982 in 2005 (through the third quarter) and 108,098 coal miners in 2000 and 112,449 in 2005 (through the third quarter). Clearly, MSHA inspectors continue to vigorously enforce the law—with the support of the entire agency, top to bottom.

I want to make something clear. MSHA's inspectors diligently and vigorously enforce the law. However, the Mine Act does not give MSHA the authority to preemptively close entire mines because of the number or frequency of violations. Nor does the Mine Act include the authority to close or seize a mine because of unpaid fines or penalties.

While we are proud of our enforcement and compliance record, we know there is more to do. We are currently engaged in a thorough investigation of the recent tragic accidents at Sago and Alma Mines. We are determined to learn from these accidents.

First, I want to publicly recognize the mine rescue teams who responded to the accidents at Sago Mine and Alma #1 Mine. These teams demonstrated exceptional bravery and professionalism, and they should be commended for their efforts, as well as for their dedication to their fellow miners.

I would like to give you an update on the Sago Mine and Alma Mine #1 accident investigations. We have finished mapping the underground areas of the Sago mine and have completed nearly all of the witness interviews. Thus far, MSHA and representatives from the State of West Virginia have interviewed forty-six individuals. We have completed an evaluation of the geology of the roof in the abandoned area of the mine where the explosion occurred. In conjunction with the National Institute for Occupational Safety and Health (NIOSH), we are developing a protocol to test the materials used in the Sago mine to seal the area where the explosion occurred. At this time we have no information that would suggest that the explosion is related

to any conditions that MSHA enforcement personnel observed and cited at the mine before the explosion.

We have completed the investigation of the underground areas of the Alma #1 mine with the exception of the immediate vicinity where the fire occurred. There are significant roof falls in this area that will have to be removed before the underground portion of the investigation can be completed. At this time we have interviewed 14 individuals and the remaining interviews should be completed within the next several weeks.

As standard operating procedure, MSHA conducts an internal review after every major accident. We will look carefully to see if MSHA followed its own policies and procedures with respect to Agency activities prior to and during the accident. This report will be shared with this committee and made public. MSHA has always viewed its internal review process as an opportunity to take a hard and honest look at how we do our job and to use that information to improve how we do business. Past reviews have been comprehensive and objective examinations that resulted in responsible recommendations for improvement. The Government Accountability Office and the Department's Office of the Inspector General are also conducting independent reviews of various aspects of MSHA's programs.

Despite the progress the mining industry has achieved in the area of health and safety, there is always room for improvement. The recent fatalities in West Virginia, along with other recent fatalities, are vivid reminders that we must continually seek new and improved accident prevention measures. And when accidents occur, we need to give miners the best possible chance to survive. I want to share some of the actions MSHA is currently taking in the areas of rulemaking, mining technology, mine rescue operations, and civil penalty assessments.

Emergency Temporary Standard

MSHA's safety and health standards are constantly being reviewed and adjustments made to improve them or address newly recognized hazards. As a direct result of the recent two West Virginia accidents, we will soon be issuing an Emergency Temporary Standard to improve safety in underground mines in the areas of: underground supplies of oxygen generating breathing devices, training, lifelines, and accident notification.

Technology

There has been much discussion surrounding the availability of technology and equipment that, if available to miners during and after fires and explosions, could increase their chances for survival. MSHA constantly searches for and evaluates emerging technologies that can be used to protect miners. On January 25, 2006, MSHA published in the Federal Register a Request for Information (RFI) on Underground Mine Rescue Equipment and Technology.

MSHA is currently in the process of evaluating advanced underground mine communication and tracking systems. The Personal Emergency Device (PED) system is a one way "through the earth" communication system used in Australia, but only used in about a dozen underground mines in the U.S. MSHA is evaluating the PED at four different U.S. underground coal mines, and plans to evaluate the system at the only U.S. mine with a surface-mounted antenna. Information on PED performance will also be collected in Australian coal mines. Although the PED could send evacuation instructions to miners in the early stages of a fire, system limitations already noted in MSHA's field evaluations may seriously compromise the reliability or true usefulness of the PED during a U.S. mine emergency. These shortcomings include the vulnerability of commonly-installed underground antennas in the event of a fire or explosion, signal loss issues, range limitations, and potential interference with other mine communication systems.

The Tracker Tagging System is an MSHA-approved tracking system for use in underground mines. A remote unit, carried by a miner, transmits its location to a "beacon" receiving unit as the miner passes the beacon. Tracking of miners is limited to identifying their location in the "zone" between two beacons where any given transmitter is located, and beacons are commonly spaced at 3,000—4,000 ft. intervals. While some have advocated mandating its use in underground mines in the U.S., little is known about the system's performance. There are no underground mines in the U.S. using the Tracker Tagging System. While it is used in several mines in Australia, it is used in just one underground coal mine in that country, and one coal mine in China.

Both the Tracker Tagging system and the PED system must be further evaluated and their effectiveness tested before rushing into a decision to mandate their use in underground mines. To that end, in a cooperative effort with the manufacturer of both systems, MSHA and the West Virginia Board of Coal Mine Health and Safe-

ty will visit four mines in Australia this month to conduct further field evaluations of the two systems. The issues reported in U.S. mines regarding signal loss or "shadow" zones will be further investigated to accurately determine the nature of these anomalies.

Other available communication technologies for consideration are actively sought through the RFI. MSHA is soliciting technical presentations or written comments on underground communications and systems for tracking underground miners and will hold a public meeting specifically for that purpose on March 13th at the National Press Club in Washington, D.C. We are hopeful that the information gathered at this meeting, together with the conclusions drawn following the field evaluations of the PED and Tracker systems in both the United States and Australia, will help direct MSHA and all other concerned parties in our efforts to provide the best available communications technologies to miners in the event of an emergency underground.

Furthermore, in response to the recent RFI noted above, MSHA has received more than 70 proposals from manufacturers and distributors of emergency communication and tracking systems. Additional proposals continue to come in on a daily basis. MSHA's Technical Support Directorate is currently reviewing these products and proposals and will assist interested manufacturers in obtaining approval for the equipments' use in underground mines. For our initial reviews we are prioritizing the emergency communications or tracking systems that do not rely on a wire backbone and that have the greatest potential to remain functional in the event of a roof-fall, inundation, fire, or explosion. From the over 70 proposals received, MSHA has initially selected several promising communication systems to evaluate based on the following criteria: precise tracking and 2-way voice preferred capability; survivability in a fire or explosion; current availability; and capability of complying with MSHA requirements.

To help expedite and standardize the evaluation of these existing and promising technologies, a mine communications partnership is being formed with membership consisting of the National Institute for Occupational Safety and Health (NIOSH), MSHA, the Bituminous Coal Operators Association (BCOA), the United Mine Workers of America (UMWA), the United Steelworkers, the National Mining Association (NMA), and the State of West Virginia. The primary goals of this partnership are to establish general performance expectations for mine emergency communications systems, establish uniform and fair criteria for testing and evaluating systems, and to conduct in-mine tests on systems. A secondary goal is to identify gap areas that should be addressed through research.

The State of West Virginia, MSHA, and NIOSH are co-sponsoring the International Mining and Health Safety Symposium on April 20-21, 2006. The symposium will bring together technology developers, equipment manufacturers, the Federal Government, the State of West Virginia, organizations representing the mining community, and other countries to discuss the development, approval, and adoption of state-of-the-art technologies and mining methods. Wheeling Jesuit University will host the symposium at the Robert C. Byrd National Technology Transfer Center and the Civic Center in Wheeling, WV.

MSHA is working with the BCOA and the NMA to jointly develop a template on mine rescue preparedness. This document will describe standardized mine emergency procedures related to mine rescue organization, lines of communication, and establishing lines of authority.

In addition, MSHA has sought information from the entire mining community, including labor, industry, academia, and local first-responders on improvements to mine rescue preparedness.

Civil Penalty Assessments

Assessments are civil penalties (fines) levied on mine operators, independent contractors working on mine property, agents of operators or contractors, or, in some cases, individual miners, for violating safety or health standards or sections of the Mine Act. The process of determining penalty amounts is governed by the criteria included in the Mine Act and federal regulations. The penalty assessment process is administered by an MSHA office separate from the enforcement arms of the agency to ensure the objectivity of the fines proposed for violations. The Office of Assessments implemented the most recent guidelines for proposing civil penalties in 2003.

These penalties range from $60 to a statutory maximum of $60,000. The $60 fine is generally imposed for less serious, timely abated violations that occur in mines with low violation histories. More serious violations may receive a computer-generated regular formula assessment that assigns points based on criteria specified in the Mine Act. The most egregious violations may receive higher assessments with

proposed penalty amounts determined by assigned specialists. The statutory maximum of $60,000 can be imposed for regular formula or special assessments.

Proposed civil penalty amounts are determined using five statutory criteria in the Mine Act:

- the size of the operation,
- the operation's history of violations,
- the negligence of the operator,
- the gravity of the violation, and
- the degree of good faith the operator exhibits in correcting the violation.

A sixth statutory criterion, the ability of the operator to continue in business, is taken into account only after the amount of the fine is proposed and presented to the operator. The operator must provide convincing evidence of financial hardship and inability to continue in business. In these cases, MSHA may adjust the fine.

If the mine operator thinks the proposed penalty is too high, the operator can contest the penalty. The contested penalty first goes to an administrative law judge of the Federal Mine Safety and Health Review Commission who can uphold the original penalty, vacate the penalty, reduce the penalty, or (in rare instances) increase the penalty. If the operator is dissatisfied with that result, the operator can ask the full Federal Mine Safety and Health Review Commission to hear the case. If the Commission takes the case and the operator is dissatisfied with that result, the operator can appeal to the Court of Appeals. Sometimes this process takes several years. A case may ultimately go to the Supreme Court.

Operators have 30 days to pay or contest their fines once they are assessed. If the fine is not contested, it is considered a final order of the Commission after the 30 days. If these fines are not paid within 30 days, MSHA begins contacting the operator and 8% interest begins to accrue. If the debt remains unpaid for 90 days, an additional non-payment penalty of 6% begins to accrue, retroactive to the date the fine became final.

Penalties are considered debts under the provisions of the Debt Collection Improvement Act of 1996. When a debt is delinquent more than 180 days, MSHA refers the debt to the Department of the Treasury for collection. Treasury may attempt to collect the debt directly, refer the debt to a private collection agency, collect the debt by offsetting Federal payments made to the debtor, or, ultimately, refer the debt to the Department of Justice for collection. If this process is unsuccessful, MSHA may terminate collection of the debt and report it to the Internal Revenue Service to be included in the company's income tax liability as taxable income.

MSHA cannot close a mine if it has too many fines or does not pay the fines assessed. The Mine Act does not give MSHA that authority. MSHA is neither soft on enforcement nor soft on assessments. This Administration stands by its assessment record. Over the last five years, MSHA proposed 21 percent more penalties at the $10,000 or higher level than during the previous five years. The total dollar value was up by 16 percent during this same period of time.

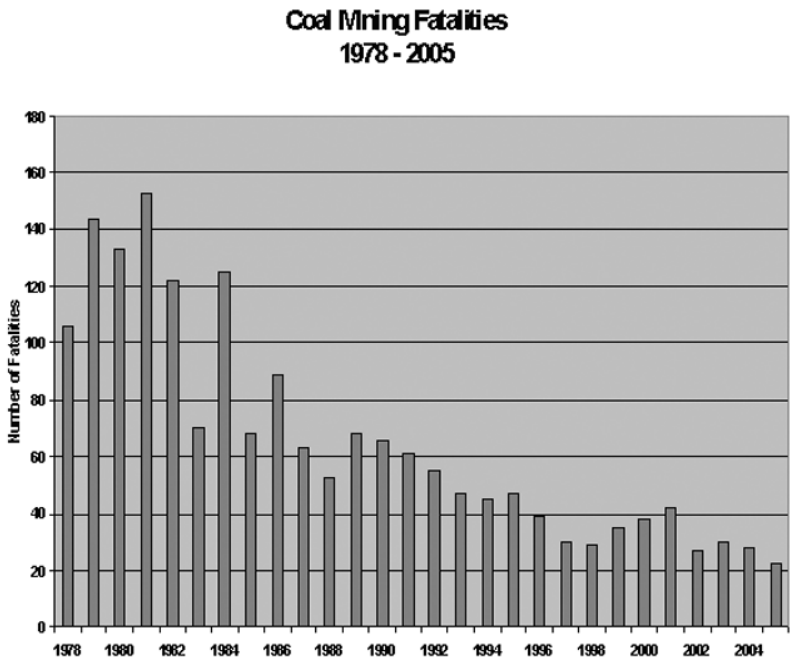
Approximately 6% of citations and orders are contested. Litigation at the Commission or in federal court impacts a large percentage of contested proposed assessments. For assessments contested between 1995 and 2005, 46 percent of the penalties were reduced and the average reduction in the penalty was 47 percent. The Administration has already proposed legislation to increase the maximum civil penalty for flagrant violations from $60,000 to $220,000. Additionally, I been directed to re-examine the penalty amounts and MSHA will soon propose rule making revisions to the penalty schedule (subject to the statutory $60,000 penalty cap).

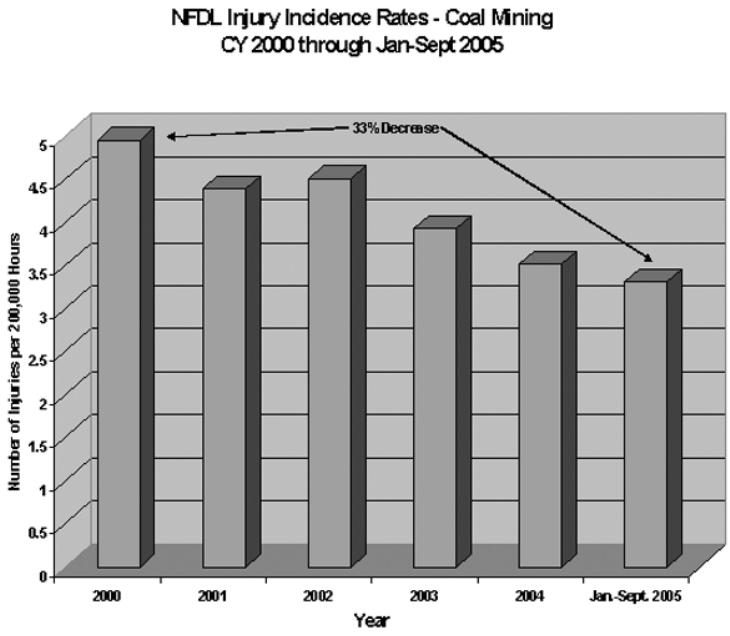
MSHA has also filed two lawsuits in February in the U.S. District Court for the Eastern District of Kentucky seeking injunctions against two separate mine operators who have chronically failed to pay assessed civil penalties for violations of the Mine Act. The complaints ask that both operators be enjoined from failing to pay penalties for future violations of the Mine Act and that both be required to post a bond with the court to guarantee future compliance with the law. MSHA is also evaluating other cases involving operators who have refused to pay civil penalties and will seek injunctions against them where appropriate.

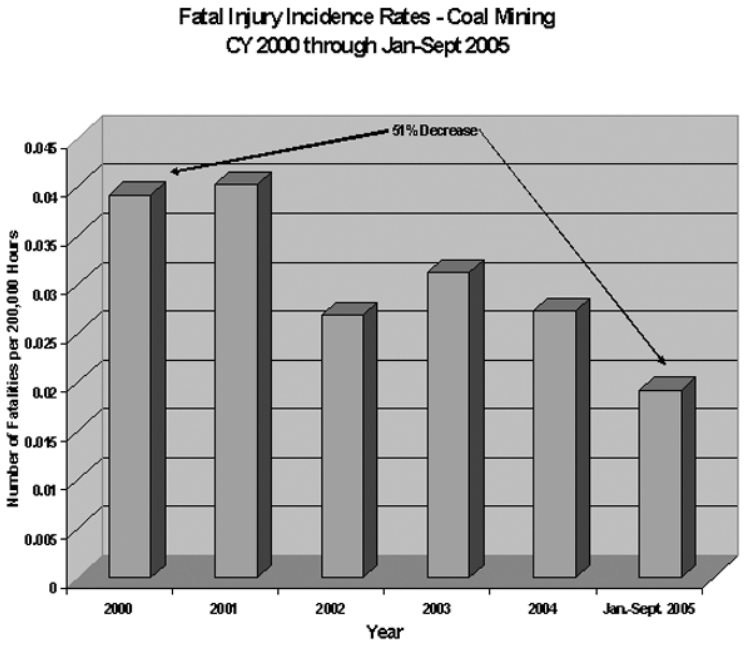
Finally, it is important to note that any MSHA violation must be abated within a specified time frame even before the penalty is finally assessed. In the case of withdrawal orders, the hazard must be abated before miners are allowed to work in the area or activity affected by the hazard.

Every employee at MSHA is dedicated heart and soul to the agency's mission. Every employee at MSHA lives and breathes for the day when there are no fatalities, no injuries, and no occupational illness among all of this country's miners. Every employee at MSHA strives every second of every day to reach our goal: sending every miner in this country home to family and friends, safe and healthy, at the end of every shift, every day. We will not rest until that happens.

Thank you.


Coal Mining Fatalities
1978 - 2005
Number of Fatalities
0
20
40
60
80
100
120
140
160
180
1978
1980
1982
1984
1986
1988
1990
1992
1994
1996
1998
2000
2002
2004


NFDL Injury Incidence Rates - Coal Mining
CY 2000 through Jan-Sept 2005
33% Decrease
Number of Injuries per 200,000 Hours
0
0.5
1
1.5
2
2.5
3
3.5
4
4.5
5
2000
2001
2002
2003
2004
Jan.-Sept. 2005
Year



Chairman NORWOOD. Thank you very much, Mr. Friend.

Mr. O'Dell, you are now recognized for 5 minutes.

STATEMENT OF DENNIS O'DELL, ADMINISTRATOR FOR DEPARTMENT ON OCCUPATIONAL HEALTH AND SAFETY, UNITED MINEWORKERS OF AMERICA

Mr. O'DELL. Mr. Chairman, members, I want to thank you for allowing me this opportunity to appear before your committee. I am testifying on behalf of the United Mine Workers of America.

I come out of the coal fields having been an underground coal miner for 19 years as well as both a local union international safety representative and a local union safety committee man.

I participated in many recent and most tragic mining disasters of the last decade, including the Jim Walter's No. 5 mine explosion in September of 2001 and the Sago Mine disaster earlier this year.

We are here today to review the performance of the Mine Safety and Health Administration, known as MSHA. The UMWA recognizes that MSHA includes many hard-working civil servants whose efforts coal miners deeply appreciate. However, we believe MSHA's top policy makers have fallen short.

In the hearing room this afternoon are a number of active miners from coal mining states that sit behind us. They are here because they care deeply about miners' health and safety. They join me in urging Congress to ensure that MSHA aggressively protects miners' health and safety so that they can perform their job safely and return home to their families each and every day.

MSHA's not developing enough new mandatory standards to protect miners' health and safety, and through policy it is allowing operators to pursue practices that compromise rather than enhance miners' health and safety.

We hope that this committee can help redirect MSHA so that it will engage in the principal activities Congress mandated when it crafted the mine act shortly after 78 miners died at Farmington, West Virginia in 1968.

These laws were written to protect the health and safety of miners after this major disaster occurred, yet mining still remains the second most dangerous industry in this country. Every year, thousands of miners remain disabled and dying from black lung disease, while many other miners die in mining accidents every year.

Most often, mining accidents claim the lives of one or two miners at a time, from roof falls, equipment failures, electrical problems and other accidents. In just the first 6 weeks of 2006, in addition to the 12 miner who perished at the Sago Mine and the two who died in the January 19 mine fire at Massey's Aracoma on the No. 1 mine, seven other coal miners also have died one at a time.

It is also interesting to note that there are countless near-misses that occur on a regular basis. Since August of 2000, MSHA records show there are well over 400 mine fires, ignitions, explosions and inundations that too far easily could have developed into significant disasters and fatalities, some of which has just recently occurred last week at the VP 8 mine in Virginia and Shoal Creek Mine in Alabama.

Many other incidents like these likely went unreported. As a result, tragedies at the Sago and the Alma No. 1 coal mine demonstrate, there is a serious void in the regulatory framework for underground miners confronting a mine emergency.

While there is a lot yet to be determined about these incidents, the note that Sago miner George Junior Hamner wrote to his wife and daughter reveals that most miners survived the initial explosion at the Sago Mine. This demonstrates that those miners had no information about where to find fresh air or about how they might have been able to exit the mine.

Though Congress specifically suggests in 1969 that the secretary consider promulgating a rule requiring rescue chambers for miners to find shelter in an emergency, we are unaware of any substantial efforts that have been made to pursue this option since the act was written.

At the Alma Mine, miners were killed after a mine fire erupted on a belt that was used to ventilate the mine. If belt air had not been permitted, and if belts were not flammable, or if the miners had more oxygen, perhaps the outcome of these miners' fate would have been different.

These deficiencies in miners' health and safety are all ones MSHA has known about for many, many years. Most of them have been known since the coal act was passed in 1968, over 37 years ago.

Problems of no communication, the inability to locate underground miners, insufficient self-rescuers were all noted as problems that confronted miners as far back as Farmington No. 9, the Jim Walter's No. 5 mine, Sago Mine and the Alma No. 1 mine. Experi-

ence demonstrates that most miners will not have them available when the next emergency strikes.

Unfortunately, under former assistant secretary MSHA, David Lauriski, 17 proposed rules were scrapped. I attached a list of those withdrawn rules with my testimony.

Along with some of those protections that would have—along with some of those protections, it would have helped miners who perished at Sago and Alma be able to avoid their disastrous fates.

Examples: As a rule that would have imposed new procedures and requirements for flame-resistant conveyor belts, to reinstate the non-use of belt air to ventilate working areas, a rule concerning improvements for self-rescuers, which we only got in 1982. And it took us 12 years to 20 years to be able to have Congress enact that under a court order.

Even with the recent spate of coal mining fatalities, I consider the industry lucky to not have suffered more injuries and deaths. This is because for too many years, the agency has not been writing new rules to protect miners and has not been doing a good job enforcing the rules it already has.

Mining is dangerous work. When you at the agency take that serious, when Congress first said in the mine act that they declare the first priority of all in the coal and other mining industry must be the health and safety of its most precious resource, the miner, we take that serious.

Everyone else associated with the mining industry must reestablish miners' health and safety as their top priority. Also, senseless deaths and injuries must stop. I urge you to require MSHA to do in 2006 all that Congress demanded in 1969 and again in 1977.

Regulations that were in the pipeline in 2001 and 2002 should be reactivated and finalized in a timely fashion. New regulations to protect miners both while on the job and on emergency strike must be promulgated. All such regulations must then be enforced regularly and aggressively.

I thank you for your interest in miner safety and will be happy to answer any questions you have later.

[The statement of Mr. O'Dell follows:]

Prepared Statement of Dennis O'Dell, Administrator, Department of Occupational Health & Safety, United Mine Workers of America

Thank you for allowing me this opportunity to appear before your Committee. I am testifying on behalf of the United Mine Workers of America ("UMWA"), the union that has been an unwavering advocate for miners' health and safety for 116 years. I come out of the coal fields, having been an underground coal miner for 19 years, as well as both a Local Union and International safety representative. I have participated in many of the recent and most tragic mining disasters of the last decade, including the Jim Walters No. 5 mine explosion in September 2001, and the Sago Mine disaster earlier this year.

Miners' health and safety has been in the headlines for much of 2006 because so many coal miners have perished. In fact, nearly as many miners died in just the first six weeks of 2006 as in all of 2005.

We are here today to review the performance of the Mine Safety and Health Administration ("MSHA"). The UMWA recognizes that MSHA includes many hard-working civil servants whose efforts coal miners appreciate. However, MSHA's top policy-makers have fallen short. They have not been doing their job protecting and enhancing miners' health and safety.

In the hearing room this afternoon are a number of active miners from coal mining states. They are here because they care deeply about miners' health and safety. They join me in urging Congress to ensure that MSHA aggressively protects miners'

health and safety, so that they can perform their jobs safely and return home to their families each and every day.

Focusing on MSHA's rulemaking responsibilities, it is apparent that the Agency has failed to promulgate rules that will better protect miners. MSHA has enacted rules that help operators' productivity while it withdraws potential rules that it should promulgate to advance miners' health and safety.

Coal is being produced at record high levels. At the same time, far fewer miners are needed to extract the mineral. However, MSHA has not promulgated rules to keep pace with record productivity and the new mining techniques, which sometimes introduce new hazards.

I will first review how current mine safety laws came into being; and then describe a number of ways in which MSHA has failed to protect miners' health and safety: it is not developing enough new mandatory standards to protect miners' health and safety, and through "policy" it is allowing operators to pursue practices that compromise—rather than enhance—miners' health and safety. We hope that in exercising your oversight responsibilities, this Committee can help redirect MSHA so it will engage in the principal activities Congress mandated when it crafted the Mine Act.

Shortly after 78 miners died at Farmington, West Virginia in 1968 Congress enacted the Coal Act in 1969; the legislation was then expanded to other mining industries and renamed the Mine Act in 1977. Since the Coal Act was passed, fatalities in coal mining have decreased dramatically: while over 300 miners died in 1968, the year before the Coal Act was enacted, fewer than 100 miners have perished in any single year over the last 20 years. Yet, mining still remains the second-most dangerous industry in this country.

Every year thousands of miners remain disabled and dying from black lung disease, while many other miners die in mining accidents every year. Most often, mining accidents claim the lives of one or two miners at a time, from roof falls, equipment failures, electrical problems, and other accidents. In just the first six weeks of 2006, in addition to the 12 miners who perished at the Sago mine and the two who died in the January 19 mine fire at Massey's Aracoma Alma #1 mine, seven other coal miners also died, one at a time.

There are also countless near-misses that occur on a regular basis. Since August 2000, MSHA records show there were well over 400 mine fires, ignitions, explosions and inundations that far too-easily could have developed into significant disasters and fatalities. Many other incidents likely went unreported.

In passing the Coal and Mine Acts, Congress made it clear that a primary purpose of the legislation was to require the Secretary to promulgate mandatory health and safety standards, and to ensure that operators would follow all health and safety standards, including the long list of "interim mandatory standards" that Congress wrote into law.

However, MSHA has done neither: it has not promulgated sufficient protective health and safety standards, and it has failed to aggressively enforce the regulations it has on the books.

As the recent tragedies at the Sago and Alma No. 1 coal mines demonstrate, there is a serious void in the regulatory framework for underground miners confronting a mine emergency. While there is a lot yet to be determined about these accidents, the note that Sago miner George Junior Hamner wrote to his wife and daughter (copy attached) reveals that most miners survived the initial explosion at the Sago Mine. It also demonstrates that those miners had no information about where to find fresh air or about how they might have been able to exit the mine. In fact, miners survived for many hours, but in the end they had inadequate access to oxygen to survive the toxic mine atmosphere.

Though Congress specifically suggested in 1969 that the Secretary consider promulgating a rule requiring rescue chambers for miners to find shelter in an emergency, we are unaware of any substantial efforts MSHA has made to pursue this option since the Act was written. Nevertheless, earlier this year just such a chamber was successfully used by, and saved the lives of, miners at a potash mine in Western Canada when they confronted a mine emergency. If they could rely on a rescue chamber to survive, why weren't the miners at Sago and Alma afforded that same opportunity?

At the Alma mine, miners were killed after a mine fire erupted on the belt that was used to ventilate the mine. If belt air had not been permitted, and if the belts were not flammable, or if the miners had more oxygen, or if they had lifelines to guide them out of the smoke-filled mine, perhaps we would have had a different outcome.

These deficiencies in miners' health and safety are all ones MSHA has known about for many, many years. Most of them have been known since the Coal Act was

passed in 1968, over 37 years ago. In fact, in 1968 rescuers could not locate all the miners killed in the Farmington disaster and 19 remain entombed in that mine. The problems of no communications, the inability to locate underground miners, and insufficient self-rescuers were all noted as problems that confronted miners, including the 13 who were killed at the Jim Walters No. 5 mine on September 23, 2001. The need for these improvements has been talked about after too many tragedies. Long ago, it was time to stop talking and time to take action to implement changes that would help miners survive emergencies.

We do not have to wait for 100% guarantees; we need to enhance a miner's chance of escaping an emergency, or surviving if trapped. Much technology is already available that would help miners survive a disaster like what confronted the miners at Sago and Alma. More oxygen, better communications, and the ability to locate the trapped miners—these improvements may well have made a critical difference in those emergency situations.

It is interesting that those advocating the status quo will say that some of the protections we seek, like supplemental oxygen, and better communications, are not worth pursuing because they may be damaged in the event of an explosion or other emergency. However, if the miners survive that initial event, they may well be able to escape or survive if they are provided additional resources. At the Sago Mine, miners survived for many hours and may well have been able to escape if they had been directed out; or they might have survived if they had supplemental oxygen stored nearby. At the Jim Walters mine, those killed had inadequate information largely because the primary method of communication was interrupted; if secondary communications (i.e., supplemental wireless devices) had been available, it is possible more would have survived. Shouldn't they be given their best chance of surviving?

Experience demonstrates that unless MSHA requires operators to provide these protections, most miners will not have them available when the next emergency will strike. Since the devastating coal mining tragedies of 2006 captured the nation's attention, a number of manufacturers of various technologies and others from various backgrounds have submitted information about various devices, and suggestions about techniques that might be able to help miners survive an emergency. I know I have received a number of interesting proposals, and that MSHA has received many more in response to its request for such information. While the UMWA supports MSHA's action to undertake a review of such information and technologies, why didn't the Agency do this decades ago? Why do we have to have a discussion about such simple solutions as more oxygen and the ability to locate miners underground in the 21st Century?

Active miners and family members of those killed at the Jim Walters' mine testified about the need for better communications, the need to be able to locate miners underground, and the need for more oxygen supplies stored underground, during a series of hearings that MSHA conducted in February, 2003. Transcripts from those hearings are available through MSHA's web page. What came from all those good suggestions? Nothing. Sadly, it came as no surprise to me when these very same problems and deficiencies confronted miners trapped in the Sago and Alma No. 1 mines; MSHA had not advanced any such protections in the intervening years.

In fact, MSHA has been going backwards in providing some of these protections. Assistant Secretary for MSHA David Lauriski scrapped 17 proposed rules on topics MSHA had identified as needing attention. I attach a list of those withdrawn rules. Among them were some of the protections that might have helped the miners who perished at Sago and Alma. Offering no explanation for its decision, on September 24, 2001 MSHA withdrew a rule that would have imposed new procedures and requirements for flame-resistant conveyor belts, even though the rule was then close to completion. On that same day, citing "resource constraints and changing safety and health regulatory priorities," MSHA withdrew its "pre-rule" concerning self-rescuers that had been among the Agency's rulemaking agenda since 1999.[1]

[1] Throughout the industry there have been problems with miners not being able to properly don the self-rescuer units in emergency situations. Moreover, without a rule addressing self-rescuers, technological advances of these breathing devices has been stymied. In the legislative history of the Mine Act, Congress indicated that mining regulations should be technology-driving, to maximize miners' protections. We had hoped that with the promulgation of a new rule addressing self-rescuers, the existing problems would be addressed, and technological advances encouraged. The UMWA is convinced that such a rule would have been the catalyst for a new generation of self-rescuer devices. While operators are willing to invest in new technology when it increases production, it appears that they are not so willing to invest when in miners' health and safety.

Continued

One year later, MSHA withdrew a pre-rule that would have addressed problems related to diminishing mine rescue capabilities.[2] The mine rescue system needs MSHA's attention. It is time for MSHA to promulgate rules that would compel the expansion of mine rescue capabilities, and require mine rescue teams at each and every mine, regardless of the mine size or location.

This current administration also withdrew a number of other rules that were at various stages of the rulemaking process. Some of the most compelling ones concern air quality, miners' exposure to airborne contaminants, and coal dust. The existing regulations utilize the same permissible exposure limits ("PELs") that were in place when the Mine Act was promulgated in 1977; even MSHA recognizes them to be outdated and inadequate to protect miners' health. MSHA had planned to update them; instead the Agency withdrew its proposed rule in September 2002.

Another proposed rule would have enacted recommendations emanating from the Secretary's 1996 Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers. This rule would have decreased the amount of respirable coal dust to which coal miners may be exposed. Reducing the allowable respirable dust exposures would both diminish miners' likelihood of contracting black lung disease and it would also reduce the amount of explosive coal dust in the mine environment. This was in the pre-rule stage when MSHA withdrew it in September 2004. Unfortunately, the only efforts regarding coal dust that MSHA made under former Assistant-Secretary Lauriski was a proposal that would have allowed respirable dust levels to increase by four fold. After a public outcry, including from a number of Congressmen, Mr. Lauriski withdrew his ill-advised proposal.

In September 2001, MSHA also withdrew a proposed rule that would have required the monitoring of respirable dust at all times. And MSHA stopped its plans to increase the required training and retraining of miners, even though the Agency identified this need back in 1998, and the UMWA has consistently asked for such increases because current requirements are inadequate.

MSHA dropped rulemaking efforts the Agency began in January 2001 to establish uniform procedures for its accident investigations. Not having such procedures has frustrated the designated miners' representatives in their efforts to participate in the investigatory interviews that took place in connection with the Sago investigation. The UMWA has been excluded from all these interviews, even though a number of active miners as well as several family members of those killed have asked the UMWA to serve as their representative.

MSHA knows how to do better. The Agency itself has performed countless internal reviews and self-analyses; the federal government's watchdog agency, the GAO, has given it direction, and the UMWA has communicated both formally and informally about how MSHA can and must do better.

Only on the heels of so many coal mining disasters commanding national attention, has MSHA recently begun to initiate some potentially useful rulemaking that could improve a trapped miner's ability to survive a mine accident. MSHA has announced plans to implement an emergency rule that would require more oxygen, lifelines, and the requirement that an operator provide MSHA with notice of a mine

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We note that reports of the recent coal mine disaster in Mexico indicated that miners had access to at least six hours of oxygen, and there were additional units available underground. If so, their oxygen resources far exceeded what must be provided to miners in this country.

[2] It took from three to five hours for the first rescue teams to arrive at Sago. That mine does not have its own rescue teams, even though MSHA regulations require mines to "establish at least two mine rescue teams which are available at all times when miners are underground, or * * * [make an arrangement] for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground." 30 CFR § 49.2. (The regulation includes an exception for small and remote mines, but does not apply to the Sago mine.) That same regulation specifies that teams "shall be considered available where teams are capable presenting themselves at the mine site(s) within a reasonable time after notification. * * *" Id. Given that it took three to five hours for the first mine rescue teams to arrive at Sago, it is apparent that the current system is not acceptable.

The UMWA submits that every underground coal mine should have mine rescue capabilities on site. These team members should be employees at the facility who would be acutely familiar with the mine. These individuals would not only be best able to carry out many of the duties required in these situations, but would also be uniquely qualified to brief additional offsite teams that may be necessary to complete the rescue. For even small and remote mines, MSHA should require mine rescue teams to be ready when disasters strike. No trapped miners should ever again have to wait three to five hours for rescue efforts to begin.

Instead of promulgating a rule that would improve rescue teams' availability and capabilities, MSHA eliminated further work on rescue teams regulations. Meanwhile, it permits operators to expand on the ill-advised practice of contracting out such work. Withdrawing the proposed rule effectively eliminated any meaningful improvement in comprehensive mine rescue activity, but it also afforded some mine operators the opportunity to disband teams so they could increase their profits.

emergency within 15 minutes of the event. These efforts are important and we support MSHA in pursuing them to a quick resolution. The Agency has also solicited information about wireless technology for communicating with and locating underground miners. These are all very worthwhile.

But we must ask, why did MSHA wait this long to pursue these issues? Why wasn't it looking for these solutions ten and twenty (or more) years ago? For an agency with such a clear mandate as that which Congress wrote into the Mine Act—to protect and improve miners' health and safety, we ask you to consider how MSHA could have gotten so terribly misdirected.

MSHA has been neither aggressive nor consistent in enforcing the regulations that already exist. It spends too much effort at "compliance assistance," and too little on enforcement.

After MSHA completed its investigation into the Jim Walters disaster, the Agency also performed an Internal Review of MSHA's actions before the explosions to "improve our inspection process to better protect our nation's miners." The review compared what MSHA actually did with what the Mine Act requires it to do. A number of problems were identified as deficiencies "at both the district and headquarters level", deficiencies "relevant to inspection procedures, level of enforcement, plan reviews, the [Alternative Case Resolution Initiative] and accountability programs, supervision and management, and headquarters oversight." The GAO also noted in a report issued in September 2003, when it investigated MSHA after the Jim Walters accident, that MSHA headquarters was not performing adequately in several key areas. Specifically, the GAO found MSHA failed to ensure violations cited to mine operators were corrected in a timely fashion. In fact, GAO found that of all the citations issued by the Agency, including those written as "significant and substantial," despite inspector-imposed deadlines by which problems were to be abated, 48% of the time the Agency failed to follow-up in a timely fashion to see if the operator fixed the hazards.

Unfortunately the Agency's top managers have done little to move any of the necessary improvements from recommendation to reality. We hope that by having Congress add its voice now, along with the public's demand for its better performance on the heels of Sago, Alma, and the other tragic accidents, MSHA will finally refocus its attention.

In addition to the subjects that are already underway for emergency rulemaking (more self-rescuers and training on transferring units, lifelines to help miners evacuate the mine, and the need to notify MSHA of an emergency within 15 minutes), and subjects that MSHA is also actively studying (emergency communications and tracking systems)—all of which are long over-due for regulation—we urge MSHA to promulgate and implement rules that would materially contribute to miners' health and safety. Without intending to be comprehensive, the issues that we identify as constituting the top priorities for MSHA rulemaking include: reducing miners' exposure to respirable (coal) dust, updating permissible exposure limits for contaminants in the mine environment; undoing the unwise belt air rule, and requiring non-flammable belts, improved atmospheric monitoring systems, expanding the mine rescue team requirements and support, improving requirements for firefighting and evacuation plans, developing a nationwide emergency communications' system for mines, increasing training and retraining for miners, revising MSHA's approval and certification system for mining equipment, requiring secondary telephone lines in a separate entry, providing miners with a safer means of escape in the event of a mine fire, explosion, or inundation, updating and increasing fines for Mine Act violations, and developing uniform accident investigation procedures. MSHA should also determine whether the seals it approves are adequate (note that MSHA-approved seals failed at Alma although 30 USC Section 303(z) of the Mine Act requires explosion-proof seals, and 30 CFR Section 75.334 and .335 provides that seals must withstand 20 psi); the Agency also should study emergency safety chambers, as suggested in the Mine Act, at 30 USC Section 315.

MSHA needs a larger budget for coal enforcement. Aside from its budget not keeping apace with inflation, instead of focusing on enforcement, in recent years MSHA has redirected some of its inspectors' time towards "compliance assistance." MSHA also needs to bolster its expertise, and prepare for the transition as many of its inspectors approach retirement.

MSHA also has been remiss in enforcing the penalties it imposes for Mine Act violations. A fundamental problem is that MSHA compromises penalties far too often; whether at conferences held with the operator at MSHA's district offices or through negotiated settlements, MSHA collects very little in the way of the fines it assesses. This means that operators have little incentive to pay. There has developed a culture whereby operators view MSHA fines as little more than a nuisance,

a minor cost of doing business. MSHA can and must do better to ensure that its fines coerce compliance with the Mine Act—that is what is most needed.

Just last month, in February 2006, MSHA initiated two injunctive actions against operators with large unpaid fines. This was the first time the Agency attempted such remedies. While we support these efforts, we also must ask, why has it taken this long for MSHA to put teeth into the enforcement side?

Coal remains a vital part of our nation's economy and a primary component of our energy needs. The industry is growing, and for the first time in decades, there are now many young coal miners. This is means there are many miners working with relatively little experience under their belts.

Even with the recent spate of coal mining fatalities, I consider the industry lucky to not have suffered more injuries and deaths. This is because for too many years, the Agency has not been taking care of business. It has not been writing new rules to protect miners, and it has not been doing a good job enforcing the rules it already has.

Mining is dangerous work. We need an Agency that takes seriously the first words Congress placed in the Mine Act: "Congress declares that (a) the first priority of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." (30 U.S.C. Section 801.) We take that admonition seriously; everyone else associated with the mining industry must reestablish miners' health and safety as their top priority, too. Senseless deaths and injuries must stop.

I urge you to require MSHA to do in 2006 all that Congress demanded in 1969 and again in 1977. Regulations that were in the pipeline in 2001 and 2002 should be reactivated and finalized in a timely fashion. New regulations to protect miners—both while on the job and when emergencies strike—must be promulgated. All such regulations must be enforced regularly and aggressively.

I thank you for your interest in miners' safety and would be happy to answer your questions.

Chairman NORWOOD. Thank you, Mr. O'Dell.

Mr. Watzman, you are now recognized for 5 minutes.

STATEMENT OF BRUCE WATZMAN, VICE PRESIDENT, SAFETY AND HEALTH AND HUMAN RESOURCES, NATIONAL MINING ASSOCIATION

Mr. WATZMAN. Thank you, Mr. Chairman, for the opportunity to be here today. At the very outset, allow me to restate our shared support for the fundamental tenet of mine safety and health legislation. That is, our first priority and concern must be the safety and health of the miner.

We appear before you today to pledge to work with you and others in the Congress to ensure that out of the recent tragedies will emerge greater cooperation in pursuit of safer mines.

The mining industry has undergone significant transformation that continues at an astounding pace. Safety and health programs have advanced and have become embedded in the mining culture. And we continue to adopt new technologies that advance the complimentary goals of safety and productivity.

Since the first oil embargo in the early 1970s, the coal industry has answered the call to provide more coal to meet the nation's energy needs while providing a safer work environment for our employees. Since 1970, coal production has increased 82 percent and coal mine fatalities have decreased 93 percent.

And today's reportable injury incident rate gives coal mining a lower rate than many other industries. No longer can coal mining be stereotyped as the most hazardous job in America. We take pride in these accomplishments, yet more can, must and will be done.

Today I would like to discuss with you a threefold challenge. First, the principles we believe should guide our actions and policy makers based on our analysis of the partial information coming out of this year's tragic events.

Second, the need to focus on accident prevention in a changed and changing mining industry. And third, modernizing MSHA's enforcement procedures to more accurately mirror actual conditions in the mines rather than inflexible adherence to somewhat outdated procedures.

We have reviewed the publicly available information that has emerged from the events in West Virginia. In addition to the establishment of an independent commission, we have developed and offer for the subcommittee's consideration as it looks at ways to advance mine safety and health through legislation the following principles.

First, ensuring development and introduction of ground-penetrating communication and tracking technology. Improving emergency notification. Enhancing safety training and rescue capabilities. Providing a liability shield and indemnification for mine rescue activities. Ensuring that new requirements are accompanied by workable transitional time frames. Providing authority for mine operators to conduct mandatory substance abuse testing of all personnel at the mine. And providing incentives to help companies invest in equipment and training needed for enhanced mine safety and rescue capabilities.

Beyond the specific guiding principles, we direct your attention to two overriding challenges. Today many coal mines present challenging geologic conditions.

As mines access deeper reserves, the technologic limitations of historic control methodologies are readily apparent, presenting miners, mine operators and agency personnel with new and more difficult engineering challenges.

To address these, we have initiated several partnerships with the National Institute for Occupational Safety and Health to examine new technologies to better protect miners' health. These partnerships have brought together experts to work on practical solutions to mine safety and health problems confronting the industry.

I am pleased to report that the industry recently joined with NIOSH and others to form a partnership on mine emergency communications.

The members of this subcommittee and the colleagues in the respective appropriations subcommittees are very aware of the need to maintain a vibrant and well funded mining research program with the NIOSH. Recent events underscore this need.

The federal government has an important role to play in technology development in order to bring safer, newer technologies to a relatively small market for safety equipment. We urge your support to strengthen this vital government function.

In addition, certain structural changes in our regulatory approach to mine safety are necessary. Key among them is the need for MSHA to conduct more focused inspections and enhance the quality of inspections. Many of our members who operate some of the safest mines in the country continue to have inspectors on site each and every day.

The misperception exists that the mine act mandate for four inspections annually of an underground mine and two annually of a surface mine only translate to four and two visits annually. Nothing can be further from the truth.

MSHA statistics show that a large underground mine can have more than 4,000 onsite inspection hours per year. This means the presence of two or three inspectors each and every day the mine operates.

Flexibility in inspection procedures is central in achieving the resource allocation determinations that are vital for improving the agency's safety and health programs and the industry's performance.

Mr. Chairman, as we look to the future, we recognize that our ability to further advance coal mine safety and health will require an examination of the structural and technologic hurdles that must be overcome.

Further improvement will require us to identify potentially dangerous conditions before they put miners' safety and health in jeopardy, as well as the appropriate means to minimize those hazards. We look forward to working with you and the colleagues in the Congress as you consider legislation to address this.

Working together, we will develop programs to train and educate a new generation of employees so that they can have a safe and productive career in an industry vital to the country's energy markets and national interest. Thank you.

[The statement of Mr. Watzman follows:]

Prepared Statement of Bruce Watzman, Vice President of Safety and Health, the National Mining Association

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you again to review the activities of the Federal Mine Safety and Health Administration (MSHA), the federal role in mine safety, and training and current regulatory activity. At the very outset, allow me to restate our shared support for the fundamental tenet of federal mine safety and health legislation, that is—our first priority and concern must be the safety and health of the miner.

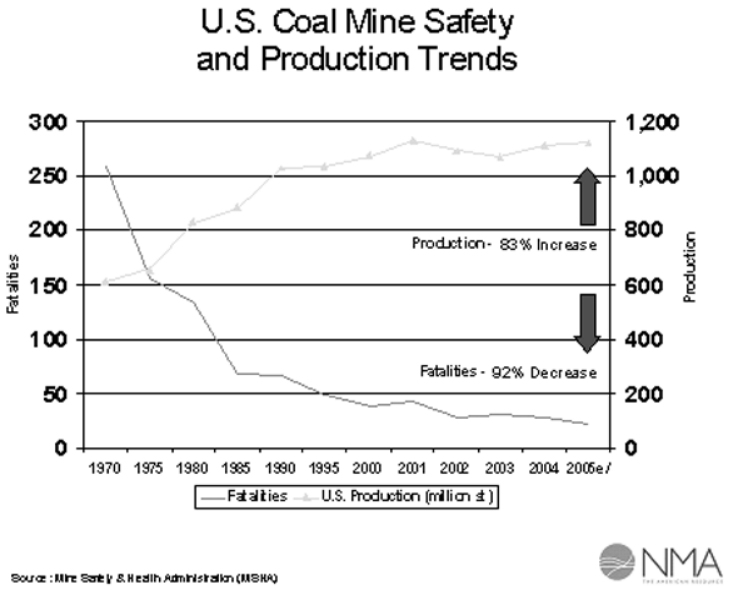
We appear before you today to pledge to work with you and others in Congress to ensure that out of the recent tragedies will emerge a stronger resolve and greater cooperation in pursuit of safer mines. Our expectation is that from this and similar hearings and from the exhaustive official investigations now underway * * * we can do better what we've tried hard to do well.

Industry Safety Performance

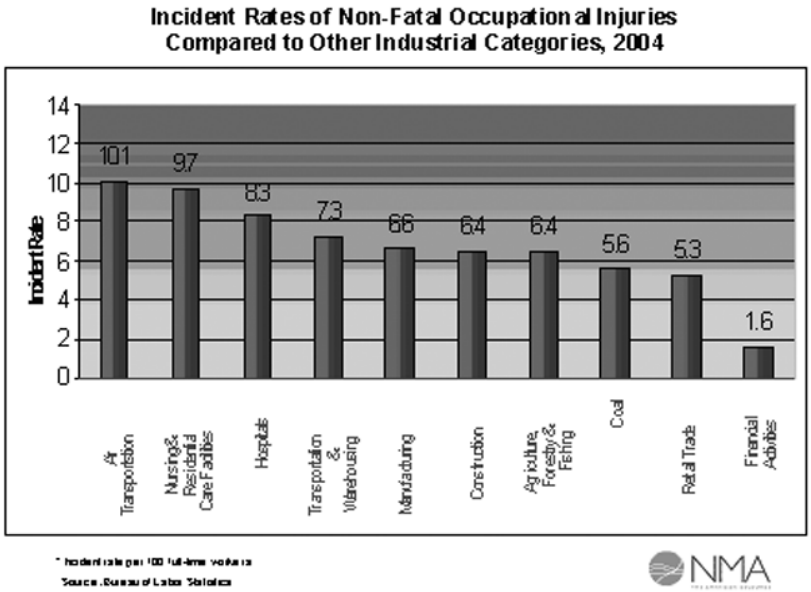
In order to consider what improvements are necessary to further advance miner safety and health, one must first review what has been achieved. Due to the tremendous commitment of all who work to provide a safe and healthy work environment for the men and women who work in our nation's mines, mining is a much safer occupation.

The mining industry has undergone a significant transformation that continues at an astounding pace. Safety and health programs have advanced and have become embedded in the mining culture. New technologies and mining methods have reduced miners' exposure to harmful conditions, and the industry continues to adopt new technologies that advance the complimentary goals of safety and productivity.

The coal mining industry takes seriously its commitment to protect its workforce. Since the first oil embargo in the early 1970s, the coal industry has been called upon to provide more coal to meet our nation's energy requirements. The industry has answered that call while providing a safer working environment for its workforce. Since 1970, coal production has increased by 83 percent, and coal mine fatalities have decreased by 92 percent.

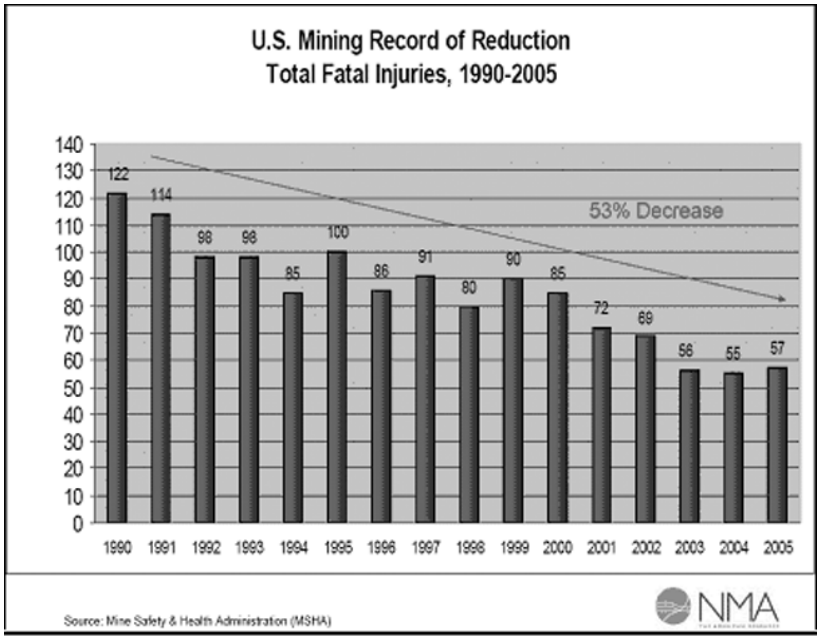


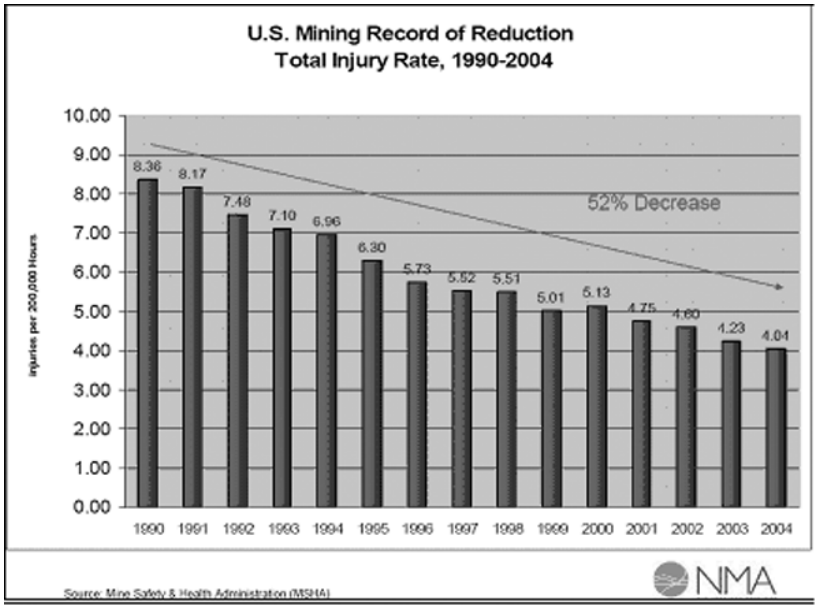
One need only look at 2004's safety record to recognize that the industry is moving in the right direction. Today's reportable injury incident rate of 5.6 per 100 workers gives coal mining a lower rate of occupational injuries than hospitals, manufacturing, nursing and residential care facilities among others. No longer can coal mining be stereotyped as the most hazardous job in America—a characterization often used by those unfamiliar with today's mining industry.



Similar dramatic reductions have been accomplished across the entire mining industry both in terms of reductions in fatal injuries as well as the industry's lost-time injury rate. During the period 1990—2004 fatalities declined 53 percent and injuries declined 52 percent. Again, progress with more work to be done.

We take pride in all of these accomplishments. Yet, the events in West Virginia again illustrate the fragile nature of these accomplishments and the need for constant vigilance to sustain them. More can, must and will be done.





Today, I'd like to discuss with you a three-fold challenge:

First, the principles we believe should guide our actions and policy makers based on our analysis of the partial information coming out of this year's tragic events;

Two, the need to focus on accident prevention in a changed and changing mining industry; and

Three, a call to modernize MSHA's enforcement procedures to more accurately mirror actual conditions in the mines, rather than an inflexible adherence to outdated procedures.

Guiding Principles

NMA has reviewed the publicly available information that has emerged from the events in West Virginia. In addition to the establishment of an independent commission of safety experts who will examine how technology and training procedures can be more readily adapted for use in our mines, our review has led to the development of a set of guiding principles that we offer for the Subcommittee's consideration as it looks for ways to advance mine safety and health. Those principles include:

- Expediting development and introduction of ground penetrating communication and tracking technology;
- Improving emergency notification;
- Enhancing safety training and rescue capabilities;
- Providing liability shield and indemnification for mine rescue activities;
- Ensuring new requirements are accompanied by workable transitional timeframes;
- Providing authority for mine operators to conduct mandatory substance abuse testing of all personnel at the mine; and
- Providing tax incentives to help companies invest in equipment and training needed for enhanced mine safety and rescue capabilities.

Mine Safety Commission Formed

In pursuit of these principles and to ensure a focused and transparent effort, NMA shortly after the first mine accident announced the formation of a Mine Safety Technology and Training Commission. The commission is drawn from safety experts in academia, labor and industry for the purpose of examining safety technologies, emergency response and rescues procedures and training regimes that could significantly enhance safety and rescue conditions in our nation's underground coal mines. The commission is being chaired by a recognized expert in mine safety, Dr. R. Larry Grayson, chairman and professor of mining and nuclear engineering at the University of Missouri-Rolla. The Commission's first meeting will be held next Friday, March 10, and it will report its preliminary findings to the public and mine safety authorities by July 1, with a final report by the end of this year. We anticipate the commission will examine, among other items, the current and new promising technologies for mine communication, tracking miners' locations, rescue technology and methods to more readily and reliably detect potential safety hazards.

Beyond the specific guiding principles discussed above, we direct your attention to two over-riding challenges.

Focus on Accident Prevention

Today, many coal mines present challenging geologic conditions. As mines access deeper reserves, the technological limitations of historic control methodologies are readily apparent, presenting miners, mine operators and agency personnel with new and more difficult engineering challenges. To address these challenges miners and mine operators, alike, have initiated several partnerships with the MSHA and the National Institute for Occupational Safety and Health (NIOSH) to examine new technologies to better protect miners' health. These partnerships have brought together experts to work on practical solutions to safety and health problems confronting the industry. I'm pleased to report that the industry has joined with the NIOSH, MSHA, the United Mine Workers of America, and the State of West Virginia to form a partnership on Mine Emergency Communications.

The work of these partnerships is still on-going, and our members continue to dedicate time and resources to this vital work. Our hope is lingering problems can be overcome through the development of new, mine-worthy engineering solutions. When based on sound science, this work can and will provide the basis for future rulemaking, if warranted. More importantly, however, the partnerships also reflect a new working dynamic that has evolved in the mining industry to advance miner safety and health.

The members of this subcommittee and your colleagues on the respective appropriations subcommittee are very aware of the need to maintain a vibrant and well funded mining research program within the NIOSH. The tragic events in West Virginia underscore this need. The federal government has an important role in technology development—in order to bring safer, new devices to a relatively small mar-

ket for safety equipment. We urge your support to strengthen this vital government function.

Modernize Our Regulatory Approach

In addition, certain structural changes in our regulatory approach to mine safety are necessary.

Key among them is the need for MSHA to overcome institutional barriers to change, including changes that prevent the agency's management from implementing new programs. No less than a paradigm shift is required for the manner in which the agency implements its legal requirements. The agency must conduct more focused inspections and enhance the quality of inspections through continued inspector training and education.

In order to allocate its resources more effectively, we believe the agency must foster a more flexible inspection protocol while maintaining compliance with the inspection mandates of the Mine Act.

Many of our members that operate some of the safest mines in the country continue to have inspectors on-site during each and every operating shift. In regions where mines have closed, inspector presence has, without cause, increased at operating mines. The misperception persists that the Mine Act's mandate of four inspections annually for every underground mine and two inspections annually for every surface coal mine translates to only four and two visits annually. Nothing can be further from the truth. MSHA statistics show that a large underground mine can have more than 4,000 on-site inspection hours per year. This means the presence of 2-3 inspectors each and every day the mine operates. With infinite resources, this wouldn't be a concern. But none of us have that luxury.

As a result, flexibility in inspection procedures is central to achieving the resource allocation determinations that are vital for improving the agency's safety and health programs and the industry's safety and health performance. The Voluntary Protection Program (VPP), instituted by the Occupational Safety and Health Administration, has been a remarkable success in the non-mining sector. Introduction of a VPP for the mining industry is long overdue. We must overcome traditional barriers to reach new safety and health plateaus—and VPP is an important tool to achieve this goal. Mines with safety performance that exceeds stringent, verifiable safety goals should not be inspected with the same vigor as those that fail to meet such criteria. Continuing to mandate a minimum of rigid inspections, with no correlation to performance, will not help us further reduce the incident rate.

Even with the changes that have been adopted, and the improvements that have been documented, more must be done. MSHA must redirect personnel and budgetary resources to ensuring safety improvements from mines with poor or unsatisfactory compliance records. We remain concerned that failure to implement, or delays in implementing required changes, may thwart the positive safety and health advances that are attained when the agency can allocate resources based upon need, rather than on historic geographic or political considerations.

The West Virginia Experience

Mr. Chairman much attention has been focused on the response the expediency with which the West Virginia legislature passed legislation to address the actual and perceived shortcomings of safety practices. Following passage of that legislation emergency rules were promulgated that became the subject of discussion and debate. This week revised emergency rules are being issued that are significantly different than those initially published. Why is that? We would submit that once the expertise of industry, labor and all relevant government officials were utilized, a better solution was achieved without losing site of the general precepts of the initial legislation. Mr. Chairman, we would hope that the Congress will learn from that experience. We believe that the best way to improve mine safety is to pool the collective efforts of industry, labor and government to solve problems, without agendas.

Summary

Today the mining industry and its dedicated mine safety and health professionals face challenges far different from those anticipated when the Mine Act was adopted. Difficult geological conditions, faster mining cycles and changes in the way work is conducted introduce potential complications that require the introduction of new and innovative responses.

As we look to the future, we recognize that our ability to further advance coal mine safety and health will require an examination of the structural and technologic hurdles that must be overcome. It will require a commitment to identify and foster the development of 21st century technology that will perform effectively and reliably in the mining environment. Technologies such as the introduction of remote control miners, integrated methane monitors on mining equipment, atmospheric monitoring

systems, and longwall mining systems are a few of the advances that have contributed to the industry's improved safety record. Advances in technology have been integral to our safety improvements thus far and will, we believe, contribute to further improvements in mine safety.

Further improvement will require us to identify potentially dangerous conditions before they put miners' safety or health in jeopardy as well as the appropriate methods to minimize, to the degree possible, the onset of dangerous conditions and practices.

Simply put, improved safety performance demands that both government and industry redirect resources toward the prevention of accidents, injuries and illnesses and away from business-as-usual policies that inevitably lead to unnecessary and unproductive confrontation.

Mr. Chairman we look forward to working with you and your colleagues as the Congress considers legislation. Working together, we will develop programs to train and educate a new generation of employees so that they can have a safe and productive career in an industry vital to this country's energy markets and national interests.

Thank you.

Chairman NORWOOD. Thank you, Mr. Watzman.

I will have to tell you that I do not think any of us up here are miners, but we are people who are desperately interested in the right policy for health and safety for miners, and so you will forgive us if we ask some questions, gentlemen, that may seem elementary to you, but we are in the process of very much trying to learn.

And I would like to follow up—I recognize myself for 5 minutes for questions. I would like to follow up just exactly on what you were saying, communications. I know a little bit about that. I know that I am told that presently a land line is what we use in mines to communicate with today, and that is not necessarily reliable, as recently we found out.

A land line is used in many situations—in war—and often they get cut. So what we want to do is say okay, you must use proper communications so these men can talk to the surface. Is it out there?

Yes, sir?

Mr. WATZMAN. Yes and no, Congressman. There are systems out there, but the systems that exist today have limitations. What we ultimately, as an industry, would like to see——

Chairman NORWOOD. Let me rephrase. Is it out there that will work——

Mr. WATZMAN. No.

Chairman NORWOOD [continuing]. Get the job done?

Mr. WATZMAN. No. It is not today. What we want to see——

Chairman NORWOOD. Under any feasible circumstance, we can rely on these folks to be able to talk to the surface and the surface back to them?

Mr. WATZMAN. The systems that are in place today in use in the U.S. rely, for the most part, on some installations of underground hardware to support that technology. That underground hardware can get damaged in an explosion or fire. We do not have today true uninterruptible, ground-penetrating, two-way communication systems.

Chairman NORWOOD. Mr. Friend, we sat right down there in Houston, and we talked of astronauts on the moon. Now, why in the dickens can't we talk to the men underground and them talk to us?

You are having a session coming up, I understand, to—let's review all of the technology, is that what is going on?

Mr. FRIEND. Currently, as I mentioned in my statement, the meeting on the 13th—that is the subject. However, we do have someone in Australia this week examining some of the technology that already exists.

Chairman NORWOOD. That is a one-way technology?

Mr. FRIEND. That is a one-way. We need a two-way communication system.

Chairman NORWOOD. That is right. Now, what do we need to do to get to that?

Mr. FRIEND. I think we need to create the market. I mean, I think if the market is there, probably the manufacturers will step up. We are investigating all of that right now. We are looking at what is available, what can be done.

We are talking to the Department of Defense and everybody we can consult with to see if the technology exists and what it would take to drive it. We are——

Chairman NORWOOD. We should talk to NASA and get them to figure this out for us. There is no reason we cannot get that done, I do not believe.

Mr. FRIEND. Well, there is a lot of ground over some of our mines. Some of them are extra deep, and without hardware in the mine itself, it is difficult to go through that much ground, that much cover.

Chairman NORWOOD. Mr. McKinney, help me understand a little bit about belt air systems. I mean, I understand—I mean, the way I would envision it, there is a conveyor belt that goes to the bottom of the mine, and we are hooking a tube onto that, where we can put air into the face of the mine for the purpose of helping have a cooler environment plus remove methane gas. Is that what a belt air system is?

Mr. MCKINNEY. Not exactly. We have dedicated entries that actually channel fresh air to the faces.

Chairman NORWOOD. You have to do that—no matter what else, you still have to do dedicated entries, right?

Mr. MCKINNEY. Yes, sir. And as a normal rule, those are separated from the belt entry because of some issues associated with belt drives and things like that.

Over the last 20 years we have petitions and modification which are the mechanism we have to look at alternate ways of complying with requirements in the regulations. And those petitions allowed people to actually take the air that ventilates the belt line, the conveyor belt line, into the face area.

It is done for a couple of different reasons. In some mines, you have a lot of ground control problems. You have 3,000 feet, 4,000 feet of cover. They cannot drive multiple entries in order to have the intake air courses, so they utilize the belt entry to take air into the face area.

When that happens, we have——

Chairman NORWOOD. Well, may I? Excuse me. I cannot figure out why employers want to do that and the miners do not want to do that. That is confusing to me.

Mr. MCKINNEY. Well, I think sometimes——

Chairman NORWOOD. I mean, doesn't it help?

Mr. MCKINNEY. I will try to—I think sometimes it does get confusing for folks. With belt air, there are some things that you have to have safeguards in place, and we do that. We have atmospheric monitoring systems that we place along the belt line to give early warnings to miners on the section and on the surface.

There is someone that stays on the surface at all times that looks at that. There is an alert level, like it could be set at five parts per million of carbon monoxide. At that alert level, you notify people that there is an occurrence ongoing.

There is an alarm level where we bring people out of the coal mine. So there is built-in safeguards when we use belt air in the face.

I think we have to be cautious—I heard a statement a moment ago about what occurred at Alma. I think we have to be cautious about prematurely jumping to conclusions on this until we find out exactly what occurred there.

I was at Alma during the recovery operation, and from what I have seen on the front end, belt air was not allowed to be used on the two section legally. So I think we need to find out exactly what the situation was there before we jump to conclusions.

Chairman NORWOOD. Well, the 1977 law says you cannot use belt air, am I right about that?

Mr. MCKINNEY. That is exactly correct. And there is a petition and modification process that allows you to offset a regulation if you put safeguards in place. As that happened through the course of industry and we looked at those petitions, more and more mines, almost 100 petitions, are out there where people were using belt air in the face through the petition process.

We did not see occurrences that caused us to believe that that was an unsafe practice, so that is why the rule was put in place.

Chairman NORWOOD. Probably need to ask the boys and girls down at the bottom of the mine how they feel about it.

My time, I see, has gone.

Mr. OWENS. Mr. Chairman, we have the ranking member.

Chairman NORWOOD. The ranking member here?

Mr. OWENS. I would like to yield to him for——

Chairman NORWOOD. Mr. Miller, you are recognized for 5 minutes.

Mr. MILLER. Thank you, Mr. Chairman. And thank you for holding this hearing.

And Major Owens, thank you for yielding to me.

First, Mr. Chairman, I would like to ask unanimous consent to insert my opening statement in the record.

[The prepared statement of Mr. Miller follows:]

Prepared Statement of Hon. George Miller, Ranking Minority Member, Committee on Education and the Workforce

Mr. Chairman, I am very pleased that you are holding this hearing today. I hope it will be the beginning of our efforts to address this mine safety crisis, and not the end. And let's be clear—this is a crisis. Twenty-one coal miners have died in the first two months of 2006, only one fewer than the total number of coal miners who died in all of 2005.

Our goal should be to reduce the number of mining deaths to zero. We will not make progress toward that goal if we continue down the path the Bush Administration is on. This Administration has not only failed to make the safety and health

of mine workers a priority, it has also undermined the mine safety program through regulatory roll backs, budget cuts, and unqualified leadership.

The President has filled the top political positions at the Mine Safety and Health Administration with former mining executives. Those executives have begun to act, predictably, in the interests of their friends in the industry, not of the mineworkers. I recently issued a report that showed that the Bush MSHA has delayed, weakened, or scrapped 18 regulations intended to protect mine workers, while adopting one rule that clearly would make them less safe.

This Administration has ignored the requirement of the law that no new standard be less protective than an existing standard. Instead of implementing a critical rule that would have gone into effect this January to help reduce the risk to underground metal and nonmetal miners of lung cancer, this Administration instead proposed to delay implementation for five years. Indeed, it claims this approach is equally as protective in putting the rule into effect promptly!

The Bush MSHA has also shifted from a focus on enforcing the law to a focus on so-called "compliance assistance." Compliance assistance is a fine approach to take with responsible mine operators, of which there are many. But the Sago Mine's owners failed to rectify serious repeated violations of the law in 2005. Its owners were interested in maximizing their profits, not complying with safety laws. Scofflaws like that only understand one thing: money. They will only comply with the laws when failing to do so means losing a lot of money.

The Bush Administration has also cut MSHA's funding every year since 2001. As a result, there is funding for 190 fewer coal enforcement personnel now than there was when the Bush Administration took office. This year, even after the horrors at Sago and Aracoma Alma, the Administration refused to request funding to pay for more enforcement personnel.

As with FEMA, when it comes to mine safety, the Bush Administration has failed in its most basic responsibility. And this Congress has failed to hold the Administration accountable. This is the first oversight hearing on worker safety in five years—five years. That is an inexcusable record of neglect.

There are a number of steps the Bush Administration must take to improve mine safety, and it is Congress' responsibility to make sure it takes them.

For starters, the Bush Administration has an obligation to stop shutting the public out of decision making processes and actions that affect mine safety. For this reason, Democrats have asked the Administration to open up all of its records, including inspectors' notes, to public scrutiny. It has begun to do so. We have also asked MSHA to hold a public hearing on the Sago accident, and it should do so immediately.

Next, the Bush Administration must immediately use the authority it already has to enforce the law to make mines safer. This means immediately implementing commonsense rules that we know would protect the lives of mine workers and could have affected the outcomes of the tragedies we have seen this year. It also means punishing scofflaw mine operators with meaningful fines that will force them to change their bad behavior, not letting them off easy with paltry fines—lower than the cost of a speeding ticket—that can simply be written off as just another cost of doing business. MSHA has said it will look at the fine structure, and that is a positive step. But it has not provided any timetable for doing so, and it should.

Finally—and this is an issue we have heard repeatedly from miners and their family members—MSHA must move more quickly to adopt new technologies to improve the safety and communications capabilities of mine workers. Communications and tracking devices are a prime example of technological advancements that could have saved the lives of many of the miners who have died last month at the Sago Mine. In an age where communications technology is rapidly advancing, it is beyond shocking that basic communications and tracking devices are not required safety protocol in mines.

Last month, Democrats convened a forum on mine safety to give miners' and miners' families a chance to make their voices heard on Capitol Hill. We heard from seven people—sons, daughters, and wives—who had lost loved ones in mining accidents in Alabama and West Virginia.

One of those witnesses was Amber Helms. She was only 23 years old, but she made a smart and eloquent statement that would make any father proud. Her father, Terry Helms, died in the explosion at the Sago Mine. Amber talked about how generous and caring her father was, and how he was her best friend. She asked why more wasn't being done to keep miners safe, and she questioned the lack of proper equipment for miners when she said:

"Yet these men work as we speak—right now today there are men underground working in conditions and with equipment that are so outdated—I mean, it's ridiculous that I can get a computer and I can make a full Web site in an hour and have

it up and running so the whole world can see it, but no one can find my dad or no one can track these men. In Australia, they have tracking devices that cost as little as $20. What's $20 to a company?"

Industry executives will argue that this technology is not yet perfected, and therefore is too risky to equip mine workers with. But even if these tools had worked properly only half of the time, lives would have been saved, and serious, life-threatening injuries would have been prevented. There is too much hanging in the ballots here to hold out for perfection. As Amber said, "The technology is out there."

This Congress has been blind to the need to maintain even the protections that already exist under the law. It wasn't long ago that some members of our committee, including its former chairman, were actively seeking legislation to abolish MSHA and NIOSH and to cut back critical enforcement provisions.

Under that legislation, three out of the four mandatory annual inspections at every underground mine would have been eliminated. Inspectors would have needed a warrant before entering mine property. Only miners in unionized mines would have had the right to accompany inspectors as they examined the mine. The circumstances in which an inspector could shut down an unsafe section of a mine would have been restricted. Mine operators would not have had to pay fines for typical citations as long as the hazards were abated. And on and on.

That legislation was defeated. But that apparently hasn't deterred Administration officials from trying to gut MSHA anyway. Now they're just dismantling it and taking it out the back door, where they think no one is watching. Well, we are watching. Legislation must be enacted to ensure that changes are made, changes that make the safety and health of these mine workers a priority, and that prevent the industry from being allowed to get away with further abuses.

I want to commend Congressman Nick Rahall and his West Virginia colleagues for their prompt hearings and action on these issues. On February 1, they introduced H.R. 4695, the "Federal Mine Safety and Health Act of 2006," which enhances and reinforces the original purpose of the landmark Federal Coal Mine Health and Safety Act of 1969, as amended by the Federal Mine Safety and Health Act of 1977. This legislation is a vital step in this process, and an effort that I am hoping will be a catalyst for change.

Amber's testimony, and the powerful and courageous testimony provided by all the witnesses at the forum, is documented for all to see. I strongly urge all members of this subcommittee to watch the footage of the forum, and the incredibly important questions posed by these witnesses, questions that have not been answered—not by the Administration, and not by MSHA.

As Amber said: "I understand that nothing that I say today or nothing that happens in the future is going to bring my dad back. But my uncle Johnny, my uncle Mike, my cousin Rocky, as well as every other miner that is underground and every other son who's getting ready to go into the coal mines—because that's where the jobs are in West Virginia and maybe some of these other states—we can prevent their families from going through this."

We owe it to Amber and every other American who has lost a loved one in a mining accident to learn what more we can do to make mines safer. And then, just as Amber says, we must take action to prevent more families from going through the hell that she has had to go through.

Thank you, Mr. Chairman.

And I would also, Mr. Chairman, like to ask unanimous consent that the transcript of the forum that we held with miners' families, the victims of the Sago and Aracoma mine disaster—that the transcript of that hearing be made part of this record.

Chairman NORWOOD [continuing]. To have an opportunity to look at that.

Mr. MILLER. I would be more than happy if you would read this record of what these families had to say to us. That would make my day, and I would hope that it would be made part of this record. So I renew my request.

If I might, Mr. Friend, what were we doing about communications before this mining disaster?

Mr. FRIEND. Underground communications? We had a hardwired system in the underground mines.

Mr. MILLER. No, but what are the agencies doing about looking at this in terms of modernization, new technologies? As the chairman has pointed out, people see us talking light years into space, and they do not see us talking into a mine.

Mr. FRIEND. Two communications systems that have received a lot of attention of late are the TRACKER, so-called TRACKER, and the PED System. Our technical support group has evaluated those in the past, as they are mandated to do because of permissibility.

So those two systems are approved, and that is when it came to our attention, and we started looking at it.

Mr. MILLER. That was when?

Mr. FRIEND. I do not know when they received their approval. I can get you——

Mr. MILLER. Does anybody at the table know when their approval was handed out?

Mr. FRIEND. We can get you that information.

Mr. MILLER. But I mean, nothing was done to provide for any requirement of this kind of communication system in the mine or tracking system.

Mr. FRIEND. That is correct.

Mr. MILLER. So up until this disaster, then, on the 25th you put out a request for some information, according to your testimony, is that correct?

Mr. FRIEND. In January, I believe.

Mr. MILLER. Mr. O'Dell?

Mr. O'DELL. Yes, I would like to speak specifically to the tracking equipment.

Mr. MILLER. Quickly, if you can.

Mr. O'DELL. In 1968, when the Farmington No. 9 mine blew up and killed 78 miners, the then Bureau of Mines was directed to come up with tracking devices to locate miners.

In 1970, the Bureau of Mines developed a system, an electromagnetic tracking system, that was proved to work as deep as 4,000 feet coverage. And it was approved and tested, and it passed all those things that needed to be passed to locate miners.

To this day, that system has sat on a shelf somewhere collecting dust. And following up on that, in 1975——

Mr. MILLER. Mr. Friend, is that accurate?

Mr. FRIEND. I have no knowledge of it.

Mr. MILLER. Well, I mean, I find it kind of stunning in the testimony. Apparently, nobody had any knowledge of this until we had this disaster. Now everybody says it is available, says it is in use in some cases in the United States and apparently in Australia, and now we are asking for a request for information on this.

And yet you put this coalition together in West Virginia and they pass the law, and I think it is going to be done in 90 days. Is that accurate? Is that correct?

Mr. MCKINNEY. I did not hear what you said. My understanding is that part of that regulation's been delayed until they could see if the technology is there.

You are right about the regulation being passed, but I think I read where the governor has delayed the implementation of the communications——

Mr. MILLER. Is that correct?

Mr. Watzman, is that correct?

Mr. WATZMAN. That is correct. In fact, we are told that today revised emergency rules are being announced by the governor to reflect what Mr. McKinney just said.

Mr. MILLER. And that would do what?

Mr. WATZMAN. It will delay the implementation of those to allow time for an examination to make sure the technology meets the objectives that have been outlined in the legislation.

Mr. MILLER. Has the agency ever conducted any experiments on any of these systems? I mean, you know, I assume that there is journals of mining, there is journals of mining safety. People keep up to speed in the health sciences and education.

Do you keep up to speed? Do you try these things in the mines? Has the association tried——

Mr. WATZMAN. Mr. Miller, one of the problems we have, as I alluded to in my testimony, is that there are 634 underground coal mines in this country. We are not a big market——

Mr. MILLER. I am asking you have you tried any of these. Have you gone to a manufacturer and said we would like to see if this works in a 4,000-foot-deep mine?

Mr. WATZMAN. Many technologies have been tried. Others have not, because there are not manufacturers who have developed these. What Mr. O'Dell referred to was research done by a government agency. I am not aware of any manufacturer that then took that information and brought a product to market.

Mr. MILLER. Mr. Friend, in your testimony, you praised, and properly so, the rescue teams that were engaged in the rescues after the events at these two mines.

And yet we have seen a number of those teams go down and a number of people being trained for those teams continue to go down, and regulations were withdrawn that would have required to have a couple of teams at each mine.

So nothing was done since those regulations have been withdrawn? I mean, it took 5 hours for people to get the rescue teams to be put in place at Sago.

Mr. MCKINNEY. I think if you look closely at those regulations that were withdrawn——

Mr. MILLER. Are you answering for Mr. Friend?

Mr. FRIEND. Oh, was the question directed to me, sir?

Mr. MILLER. Yes. Hello, Mr. Friend. You are in this room. Do you want to listen for a minute?

Mr. FRIEND. Sure.

Chairman NORWOOD. Be nice.

Mr. MILLER. Be nice? This is the third time he says I—you know, he is in some other place.

Mr. FRIEND. Well, you know, I spent a few years in the mining industry, and my hearing is not quite what it should be.

Mr. MILLER. Well, then say so, and we will——

Mr. FRIEND. I apologize for that.

Mr. MILLER [continuing]. Be happy to work with that. So what is the answer? The question is what has been done since the regulation was withdrawn that would have required a couple of trained teams at each mine. What has been done since then?

As I look at the figures, both the number of teams and the training provided has continued to go down.

Mr. FRIEND. The regulations allow mining companies to contract their mine rescue services. That is in the regs. Most of the large mines have their own teams. And in that respect, we have not done anything to change the numbers because they are all in compliance with the regulations.

Mr. MILLER. So you are not suggesting to me that there is a qualified rescue team readily available at each and every mine.

Mr. FRIEND. Yes, within a 2-hour travel time, which is what the regulation requires.

Mr. MILLER. How come it took 5 hours?

Mr. FRIEND. Two hours travel time.

Mr. MILLER. Well, why was it 5 hours in this case?

Mr. FRIEND. Well, I was not there that day, but we did not receive notice until 2 hours after the incident. We were on the property 4 hours after that. I do not know when the first team got there.

Mr. MILLER. Are you addressing the rescue team issue, or you do not think it needs to be addressed? It is nowhere in your testimony.

Mr. FRIEND. That is part of the request for information. Also, with the state of West Virginia we are having a co-meeting along with NIOSH to discuss technologies, communications, rescue, all of it.

Mr. MILLER. This is a real busy agency since this disaster.

Mr. FRIEND. Well, we have had a remarkable record up until this January, and I do not think anyone can dispute that, in accordance with the numbers.

Mr. MILLER. But you do not engage—I mean, you do not engage in some kind of constant, continuous improvement around these critical issues of in-mine safety, of rescue safety, of communications? This isn't an ongoing effort?

Mr. FRIEND. Absolutely. But I do not think anyone in this room knows the root causes of Alma or the Sago Mine accident.

Mr. MILLER. This is about just dealing with the event. You know, listen, we are very happy with the record, but it is not to suggest that we have erased the events. Mine rescue deals with an event taking place. Communications deals with an event taking place.

I assume that there is some effort to constantly update our ability to respond to events, but apparently there is not. It has all sort of happened since January 9th.

Mr. FRIEND. We are taking a look at that.

Chairman NORWOOD. Thank you, Mr. Miller. You are into Mr. Owens' time.

Would you restate you request, please?

Mr. MILLER. I asked unanimous consent that the transcript of the February 13th hearing that we had with the families of the miners who lost their lives in the mine could be made part of the transcript of this record.

Chairman NORWOOD. That is so ordered.

Mr. MCKEON. Would the gentleman yield?

Mr. MILLER. Thank you.

Mr. MCKEON. Would the gentleman yield?

Mr. OWENS. Yes, sir.

Chairman NORWOOD. Mr. Chairman, yes.

Mr. MCKEON. Good to see you.

Chairman NORWOOD. Good to see you.

Mr. MCKEON. It was not a hearing. It was a forum held by the minority.

Mr. MILLER. Correct.

Mr. MCKEON. And that will be so stated in the record.*

Mr. MILLER. Yes.

Mr. MCKEON. Just for that clarification.

Mr. MILLER. We get carried away and think it is a hearing every now and then, Mr. Chairman. You know how it is. But we were listening, Mr. Chairman.

Chairman NORWOOD. We are going to make sure it is not.

Dr. Price, you are now recognized for questioning for 5 minutes.

Mr. PRICE. Thank you, Mr. Chairman. I appreciate you holding this meeting and appreciate the information that has been delivered. I would also request and just reiterate what you said early on that sober, deliberate, calm discussion of this is the way that we get to solutions, I believe, and would encourage that from all.

I want to thank the miners who are here, and please convey to your brothers and sisters in your work that I believe and we believe you are on the front lines of our energy independence, and thank you for the work that you do.

I want to also thank MSHA and those folks who have demonstrated clearly a decrease in mine incidents and fatalities. As I understand it, 2005 had the lowest number of fatalities in the history of the mining industry, and so somebody's doing something right.

And I just want to point out for the record that both Mr. Friend and Mr. McKinney are from MSHA, and Mr. Friend mentioned at the beginning that Mr. McKinney may answer certain questions if somebody has greater information, and so I respect that you two are tag-teaming it, and would ask whoever has the greatest amount of information to supply that for us.

I would ask either of you whether you believe that Congress needs to do anything to improve MSHA or mine safety at this point, given the recent history?

Mr. FRIEND. Well, certainly there are several areas that maybe could use improvement. Our penalty process is antiquated. It is quite old. And the acting assistant secretary of labor, David Dye, has asked me to start the process to revise part 100, which is in the 30 CFR, which will increase the penalties.

The secretary has proposed, and the president, I think, has recommended that the maximum fine, which now is set at $60,000 in the statute, that that be increased to $220,000 for the flagrant violations. Those are some of the things, I think, that Congress can do.

Mr. PRICE. Anything besides penalties?

Mr. FRIEND. Sir?

Mr. PRICE. Anything besides penalties?

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*Submitted and placed in permanent archive file, Democratic Members of the House Education and the Workforce Committee, Forum on Mine Safety (Political Transcripts, CQ Transcriptions, Inc.) (February 13, 2006).

Mr. FRIEND. We are doing pretty well with what we are—I mean, with the regulations that we are proposing. As far as congressionally, I do not know.

I know there are some things in there that we are currently already doing that has been put forth—for example, the 24-hour, 7-day hotline to report accidents, which the management at the Sago did not utilize. That is answered every day by a person.

Mr. PRICE. Let me move on to a couple other items, because——

Mr. FRIEND. Sure.

Mr. PRICE [continuing]. We are limited on time, and I appreciate that.

Mr. O'Dell made some pretty scathing statements, and as far as I can tell, many of them are accurate. And I would ask you to comment on—this belt air issue has me perplexed. As the chairman said, it appears that the company wants it, the miners do not, and that has not been worked out. I would ask you to comment on that.

And then as a lay person not knowing anything about mines, how can belts be flammable? I mean, I understand how they can, but why do we allow flammable belts in an environment where explosions are possible?

Mr. FRIEND. For your first question on the use of belt air, we have been approving on a case-by-case basis the use of belt air to ventilate working faces for 26 years. In fact, during the previous administration, those were approved on a case-by-case basis 67 times. So it is not anything new.

So the belt air rule, when it came out in 2004, codified all the stipulations and requirements that were in those case-by-case petition for modifications. That included, as Ray mentioned, the atmospheric monitoring systems and the state-of-the-art fire suppression systems.

Air is needed at the working face to dilute methane.

Mr. PRICE. And flammable belts?

Mr. FRIEND. And the flammable belts—we determined that with the atmospheric monitoring system and the fire suppression system, there wasn't a need for a rule.

Mr. PRICE. And I find that hard to believe, but I will take you at your word. Again, as a lay person, it is just inconceivable to me that we cannot tell where miners are at all times by some tracking device, and I just cannot believe that that technology is not out there.

Mr. FRIEND. It is only in two coal mines in the world, the TRACKER system. One is in Australia, which we are evaluating this week, and the other is in China.

Mr. PRICE. We just ought to be able to tell where they are.

Mr. FRIEND. Sir?

Mr. PRICE. We just ought to be able to tell where they are. It does not make any sense.

Second, and I will close with this, it would make sense to me from a structural standpoint of mine that there ought to be safety rooms as the mine is built, as you go further in, that have some kind of communication device.

So when we are sitting at home watching the television and crying and grieving for the families that are waiting for their loved

ones to come up, it just seems like there ought to be a room where they ought to be able to go and be safe until we get there.

Mr. FRIEND. Well, the metal and non-metal mines have required refuge chambers for many years in this country. If a miner cannot get to the surface within 1 hour, they have to have a refuge chamber. And the 1 hour is because the limitations on the self-rescuer they are wearing on their belt.

However, that ore does not burn. It is totally unlike coal. I mean, coal in itself is a fuel. And does it work? It has in some countries, I understand, and certainly we want to look at those. I met with a manufacturer recently from Australia who is willing to make one that is telescopic, and that is due to the low heights of coal seams in this country, and they go down to 28 inches, 29 inches, if you can believe that.

So it is difficult because coal advances at such a rapid rate in development. Coal is a fuel. And we do not want people going into a refuge chamber if they can evacuate the mine. And if we failed anywhere over the years, it is to get that message: You evacuate the mine. You do not barricade.

And we have distributed stickers—I have one on my hard hat that is years and years old. First item on it: If escape is blocked—and it is in red—then, in black letters—then you barricade. And perhaps we have not continued to hammer on that message, but we had that opportunity in January during the stand down for safety.

All across this nation, we made that point, and we will continue to make it. You do not stay. You do not barricade. You get out of the mine. And that is the reason for the SCSR in the early 1980s. It gave them 1 hour of oxygen to get out of the mine, not to barricade with.

Mr. PRICE. Thank you, Mr. Chairman. My time has expired.

Chairman NORWOOD. Good question, Dr. Price.

Mr. Owens, you are now recognized for questioning.

Mr. OWENS. Mr. Chairman.

I would like to direct my first question to Mr. Friend and Mr. Watzman about these devices. Our information is that devices, tracking devices, are available not just in China and Australia but South Africa, Argentina, Canada and a couple other places.

Now, in your department, is there any person assigned to keep up with what is happening in the world? We try to stay ahead of the world in every other respect.

And, Mr. Watzman, you gave very fuzzy answers about such equipment, as if it may exist but it is not perfected. We can communicate with people on the moon. We can communicate with people on the Titanic at the bottom of the ocean. We have all kinds of ways to communicate, you know, on reasonable mediums.

So why does it have to be absolutely perfect before it is useful? This device here has been in use for 15 years to 16 years. It is a tracking device. It costs $20. Why doesn't every miner have one now?

Are the costs so great that a coal industry that is making tremendous amount of money on energy—produce energy now—I am sure you are making huge profits. What is the impediment to introducing these devices?

There is another device here which has been in existence for quite a while which will give you a—send to the miners a message. It cannot communicate two-way, but it can send them a message. It could have gotten a message which says—those miners in Sago—that if you walk a certain distance in a certain direction, you will be out of the smoke.

You know, this is the kind of thing—these things exist now. Why is not America, always wanting to be ahead in technology—why are we dragging our feet, and why do you give such fuzzy answers about the possibilities?

Mr. WATZMAN. Congressman, let me begin with the tracking device and set the record straight on a couple facts. Number one, the device you have shown is not $20. It is $200. But price is not the issue.

Mr. OWENS. You mean the market has not brought it down yet.

Mr. WATZMAN. This industry has shown time and time again that it will spend what it takes to provide a safe environment. But that——

Mr. OWENS. $200 is an impediment?

Mr. WATZMAN. But that device in and of itself does not provide the tracking. There are underground beacons that have to be placed every 150 feet for those to operate. The miners must pass by those beacons. And if one of those is damaged when underground, you have lost tracking capability.

It is not that we will not do it. It is not that we are unwilling to do it. It is that we are not aware of technology that has been perfected to provide——

Mr. OWENS. Are you going to wait until it is fully perfected?

Mr. WATZMAN [continuing]. What we ultimately would like to see——

Mr. OWENS. It has to be 100 percent perfect before you will install it?

Mr. WATZMAN. No, it does not have to be 100 percent, but we also do not want to provide a false sense of security. These systems are not perfect today. They require——

Mr. OWENS. Thank you, sir. Thank you.

Mr. WATZMAN [continuing]. Underground——

Mr. OWENS. Mr. Friend, Mr. Friend——

Mr. FRIEND. Yes.

Mr. OWENS [continuing]. Have you ever considered mandating that they use these devices? Anybody looked at the situation? Has your department concluded that it is too costly, it is not quite perfect? Has there been any real discussion of these existing devices employed in mines throughout the world?

Mr. FRIEND. Yes. As I said, we are evaluating one in Australia now. There is none in this country, the TRACKER.

Mr. OWENS. You are evaluating one in Australia.

Mr. FRIEND. Yes, the TRACKER system—also, the PED System. We have gone to four mines in the last 2 weeks to evaluate the effectiveness of the PED.

Mr. OWENS. One has been around for 15 years.

Mr. FRIEND. I spoke to president of the company that manufactures those, and they are not $20. They are $200. But as he said, the price is irrelevant. But there is a lot of misinformation——

Mr. OWENS. Price is irrelevant, okay?

Mr. FRIEND. That is what I said, yes.

Mr. OWENS. Let me talk about price in these—I have about 18 significant safety rules, health and safety rules, that you have either withdrawn—17 you have withdrawn and one you have delayed.

What was the problem? I will just read a few: Enhanced requirements for self-rescuers. Require conveyor belts to be flame resistant. Establish accident investigation hearing procedures. Lower miner exposure to coal mine dust.

Why were they withdrawn, all of these? Was it too costly, too complicated? I mean, what is——

Mr. FRIEND. Well, first——

Mr. OWENS. I am going to——

Mr. FRIEND. First of all, those are——

Mr. OWENS [continuing]. Ask unanimous consent to submit questions——

Mr. FRIEND. First of all, and I may not be able——

Mr. OWENS [continuing]. In writing—I am going to give you the whole list of 18, but——

Mr. FRIEND. Sure.

[The submitted questions follow:]

Supplementary Questions for Witnesseses Submitted by Representatives Owens and Miller

Questions for Mine Safety and Health Administration (MSHA) Witnesses

1. News reports have indicated that MSHA investigators have declined to interview the mine rescue teams which participated in the rescue attempts at the Sago and Aracoma Alma mines. This has caused much concern among the rescue team members, the families of the victims, and the mining communities. Do MSHA accident investigation procedures require such interviews? How can we ensure future rescue teams are prepared for their tasks without interviewing those who have recently had to perform rescue duties?

2. The regulations currently provide that with the exception of small and remote mines and those operating under special mining conditions, every operator of an underground mine is to establish or enter into an arrangement for two mine rescue teams to be available at all times when miners are underground.

a. How does MSHA ensure compliance with this requirement? Is this something checked during mandatory and spot-inspections? How many operators have been cited by MSHA over the last year for failure to comply with the requirements of 30 CFR 49.2 and what penalties have been assessed?

b. Has MSHA delegated any responsibility to ensure compliance with this requirement to any of the States? Do any of those states have requirements concerning rescue teams that differ from those under 30 CFR 49.2?

c. How many underground coal mines and how many underground metal and nonmetal mines currently meet this requirement by establishment of their own rescue teams?

d. How many underground coal mines and how many underground metal and nonmetal mines currently meet this requirement by entering into an arrangement for mine rescue services rather than establishing their own rescue teams? Of these, how many contract with a state to provide rescue services? How many contract with the operators of other mines? Do any contract with local rescue services or fire departments? How does MSHA ensure that these non-resident teams are trained and equipped in accordance with the requirements of 30 CFR Part 49?

e. How many underground coal mines and how many underground metal and nonmetal mines are currently considered "small" or "remote" for the purposes of this requirement? How frequently does MSHA review their mine rescue plans?

f. How many underground coal mines and how many underground metal and nonmetal mines currently operate "under special mining conditions" for the pur-

poses of this requirement? How frequently does MSHA review their mine rescue plans?

3. What procedures does MSHA have in place to coordinate its activities during an emergency with local first responders such as police, rescue and fire departments? Does MSHA have funds dedicated to training first responders about special needs in mine emergencies? Are mine rescue teams required to invite local first responders to participate in required training sessions?

4. Why did this Administration withdraw from its rulemaking agenda initiatives that would have addressed some of the safety hazards that have led to the recent loss of lives underground? Why haven't you restarted each one of these initiatives?

5. You have announced you will be using the agency's authority to issue emergency temporary standards to deal with a few of the safety hazards that have received public attention since the Sago accident. On the other hand, you seem to be moving at a much slower pace in adopting rules requiring new communications technologies which could have saved lives in that tragedy. Is this because the industry has threatened you with a lawsuit? What can this Congress do to ensure these life-saving devices get into our mines before more lives are lost?

6. For many years, permitting air used to ventilate the mine to run over conveyer belts, which generate friction and sparks, was prohibited by the law. Exceptions were only permitted after a public hearing and a determination by MSHA that the mine operator would observe a set of conditions specifically designed to limit the risk of fire in that mine. This Administration "green lighted" the use of "belt air" with a new regulation. In light of the Aracoma-Alma fire, why isn't MSHA seeking to put a hold on its "belt entry rule"?

7. We have seen a news release announcing a new review of the penalty assessment process at MSHA, but nothing more than a news release. What is the scope of this effort and when can we expect some answers?

8. You appear to have succeeded in greatly angering the families of the victims of these tragedies by, to date, keeping them from hearing witnesses who may be revealing information about the last hours of their loved ones. Why did MSHA withdraw proposed rules that would have, after public notice and comment, established procedures for public hearings and accident investigations?

9. After tragedies like this, how should MSHA's own conduct be assessed? Don't we need some independent jury or body performing this critical function to ensure a full and honest review?

10. Are decisions about mine safety and health being made by MSHA's technical experts, or are non-expert appointees in other parts of the Department of Labor calling the shots?

11. Self rescuers only provide about one hour's worth of oxygen, and MSHA only requires operators to provide one for each underground miner. Why hasn't MSHA required more?

a. Isn't it true that it could often take more than an hour to evacuate a mine?

12. It was recently reported (Charleston Gazette) that the number of mine rescue teams declined by 10 percent between 2000 and 2002 alone, and the number of people participating in the annual rescue team competition has declined by 70 percent in the last 30 years. Do you know how many mines currently meet the requirements for having at least two mine rescue teams within two hours of the mine?

a. When the Bush Administration withdrew a Clinton-era proposal that sought to increase the number and availability of mine rescue teams, the Administration stated that it planned to evaluate non-regulatory alternatives to that proposal. What have you done to evaluate those non-regulatory alternatives? What would those non-regulatory alternatives be? What have been the results of your evaluation thus far?

13. What is the state of your inspector workforce? In a September 2003 report, the GAO warned that 44 percent of MSHA's inspectors would be eligible to retire within 5 years. Are we facing a shortage of qualified mine inspectors?

14. What impact has the loss since 2001 of 190 authorized coal enforcement personnel had on MSHA?

15. When the Administration withdrew the Clinton-era proposal to improve the use of self-contained self-rescue devices, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." What were those resource constraints? What were those changing safety and health regulatory priorities?

a. When the Administration withdrew the Clinton-era proposal to improve accident investigation hearing procedures, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those re-

source constraints? What were those changing safety and health regulatory priorities?

b. When the Administration withdrew the Clinton-era proposal that included requirements for technology to strengthen protections against two-story high trucks that haul coal, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

c. When the Administration withdrew the Clinton-era proposal to lower exposure to silica to prevent silicosis in mineworkers, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

d. When the Administration withdrew the Clinton-era proposal to provide new safety standards for specific conditions in anthracite mines, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

e. When the Administration withdrew the Clinton-era proposal to increase the number of hours of annual refresher training for mine supervisors, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

f. When the Administration withdrew the Clinton-era proposal to address the safe design and construction of impoundments at metal and nonmetal mines, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

g. When the Administration withdrew the Clinton-era proposal to revise and clarify a standard to require underground metal and underground non-metal mines to have at least two separate exits to the surface, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

h. When the Administration withdrew the Clinton-era proposal to address a gap in the regulation that prohibits people from walking on or around surge or storage piles but allows vehicles and equipment to be operated on the piles "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

i. When the Administration withdrew the Clinton-era proposal to explore both regulatory and non-regulatory ways to eliminate or reduce hazards associated with confined spaces in mines, including entrapment by shifting piles, falling into materials, and being struck by overhanging materials "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

j. When the Administration withdrew the Clinton-era proposal to specify the proper equipment electrical grounding, in light of accidents occurring from inadequate and improper grounding of power mining equipment "in light of resource constraints and changing safety and health regulatory priorities." With respect to this proposal, what were those resource constraints? What were those changing safety and health regulatory priorities?

16. A February 27th, 2006 article in USA Today stated that "federal inspectors routinely concluded that safety violations at the Sago Mine endangered only one person, findings that helped keep fines to a minimum before the disaster killed 12 miners in January." We understand that, if a violation is deemed to endanger more than one person, the fine may go up dramatically.

a. Sago had six citations for blocking escapeways that miners use to flee a fire or explosion. Each citation said only one miner was endangered by the blocked escapeway. The mine paid $60 fines for each of two such violations. Why would only one miner be endangered by a blocked escapeway?

b. On August 16, 2005, an inspector found "chemical smoke" being blown toward areas where two mining teams were working. A team typically has eight to ten miners. The citation said one miner was endangered. Why would only one miner out of a total of two mining teams be endangered by chemical smoke?

c. Sago was cited for 22 violations from July 2004 to December 2005 for "accumulation of combustible materials"—coal dust and coal chunks that can spread fires and explosions. All 22 violations said one miner was endangered. Why would only one miner out of an entire underground workforce be endangered by the accumulation of combustible materials each time?

i. Across the board, is this a common practice? What does it accomplish other than deflating the fines that may be assessed for a safety or health violation?

Questions for National Mining Association (NMA) Witness

1. Is the NMA prepared to support any of the legislation that has been introduced to-date in the U.S. House or Representatives or the U.S. Senate?

2. You remember the efforts of this House about a decade ago to eliminate the Mine Safety and Health Administration (MSHA), to cut the number of mandatory inspections, and to otherwise weaken protections in this Nation's mines. Did your organization support those efforts? Does your organization believe any strengthening of the law is required, for example to deal with scoff-laws who refuse to pay penalties after all the adjudication is completed?

3. It is widely accepted in Australia and other nations that a safe and healthful mine is a productive mine. Given this country's increased demand for coal, isn't it the obligation of this Congress to give MSHA more vigorous enforcement authority so it can ensure that each mine operator understands this simple but fundamental, guiding principle?

4. What does your organization think about a user fee which would fund MSHA compliance assistance activities, so that it would be able to provide you with such services while using the taxpayers' money to fund enforcement?

Questions for the United Mineworkers of America (UMWA) Witness

1. Why do you think MSHA has yet to require mine operators to use a continuous dust monitor to help bring new cases of black lung disease to an end?

2. The mining industry has recently renewed its efforts to bring in foreign workers to operate the nation's mines. Aren't there plenty of our own young people who have gone through the basic training required for these jobs? Does this body need to do something more to help ensure the new generation of miners is trained in avoiding safety and health hazards?

3. The UMWA serves as a miners' representative in the Sago investigation. Could you describe the role of a miners' representative in an investigation? Has the miners' representative been permitted to attend all the witness interviews at Sago?

Mr. OWENS [continuing]. For those few, can you give me one or two examples of why you withdrew the mine safety health?

Mr. FRIEND. First of all, most of those, or a lot of them, were advance notices of proposed rules. They were not proposed rules, which makes a difference. A lot of administrations puts things on the regulatory agenda to seek information from the public, and that is what a request or advanced notice of proposed rulemaking is, such as the mine rescue teams was.

The SCSR proposed rule, or ANPR, whichever one it was, and I am not really sure—the rationale for the core issue was to reduce the shelf life from 10 years to 5 years.

Actually, NIOSH is drafting a rule now on SCSRs along with us. We do the approval for the explosiveness, and so it would be a joint effort.

Mr. OWENS. Would you agree with me that the coal mine industry is not in any fiscal difficulties that would prevent them from going forward to implement these procedures? It is quite well off in terms of its profits at present.

Mr. FRIEND. Well, I cannot speak for the coal industry, but the profits probably are pretty good, considering the price of coal.

Mr. OWENS. Maybe Mr. Watzman will tell us.

Is there any problem with not being able to finance these safety measures?

Mr. WATZMAN. Congressman, as I said before, this industry has shown repeatedly that it will spend the money to provide a safe and healthy environment when the technology is available.

Mr. OWENS. Mr. O'Dell, will you comment on that, please?

Mr. O'DELL. Yes, sir. I would like to make a couple of comments, if I may, on some of the things that you have said and some of the other members have said, if I may, just to clear up.

There has been some information that was given today that may not be accurate. Self-rescuers, self-contained self-rescuers—the same units that I wore when I worked underground in 1977. There has been no improvements. That is sad.

The miners that provide energy to this country today have to rely on a 1-hour unit to get them out. I would suggest to anybody in this room, if they knew they only had 1 hour of oxygen to get out of this room, if they would stand still for that. It is time to move on and develop something better than what we have today.

To suggest that the mining industry is safer now than it was before—if you look at it, we have had 21 fatalities this year. If you go back to February of last year, in a 12-month period up to now, we have had 43 total mine fatalities in that 12-month period. That is unacceptable. It should never be acceptable.

To clear up what is going on in West Virginia with the commission on the 90 days, I helped set that up. We have three members who sit on that commission. Three members represent industry. Three members represent labor.

What they are to do is look at what is available today, because we believe there are systems out there available today with better communications, better self-rescuers, better forms of oxygen, and that panel is instructed to deliver all those available technologies to Governor Manchin.

I personally talked with Governor Manchin. And if they cannot come to a conclusion after 90 days, Governor Manchin will push his bill as it is written, and it will move forward.

Belt air—the only reason we have belt air ventilating coal mines today is because of poor planning. Operators got behind on their long wall developments.

And if you ask any of these miners behind me, they will tell you they sat in meetings with mine management, and they have come to them to ask them to help get belt air to ventilate their mines because they got behind on their long wall developments.

We had to reduce down to three entries, so now you only have three entries to ventilate the coal mines. that is unacceptable, and that is the only reason.

Congress prohibited the use of belt air ventilation, and they need to go back and reinforce that rule that they have on the books.

Chairman NORWOOD. Thank you, Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Chairman NORWOOD. Senator Kline, you are recognized now for 5 minutes for questioning.

And I remind us all we have a vote at 1:30. Oh, okay, good, we are good to go. Three o'clock.

Go ahead.

Mr. KLINE. Thank you, Mr. Chairman.

Thank you, gentlemen, for being here. I want to identify myself with the remarks of the chairman early on that I am not a miner and I do not think any of us are miners.

I have been in a mine one time, and that was scary enough for me, so my hats off to the miners who do this every day—fairly amazing career choice.

Let's see whose testimony—it looks like this is Mr. Friend's testimony. On page eight there is a fairly interesting chart on coal mining fatalities going back to 1978 and up to 2005. That is a trend line that we would like to see, I think, in the long range. It is going down, the number of fatalities, on an angle about like that.

Then on page 10, there is another chart that is much shorter. This is incident rates going from 2000-2005. I am curious as to what that would look like if it went back to 1978.

In other words, are the rates going down on the same sort of trend line that the total fatalities are? Do you happen to know off the top of your head?

Mr. FRIEND. Well, just off the top of my head, from 1996, for example, to 2000, the incidence rate was above five, to give you a little bit of comparison. And in 2001 it dropped to 4.75, 4.60, 4.23, 4.05, and currently, for 2005, and with preliminary data, it is down to 3.89 total incidence rate.

Mr. KLINE. Okay.

Mr. FRIEND. So it was in the fives.

Mr. KLINE. Again, it is important to look at it over along term, because you can have spikes in any given time. And I bring this up because I sort of had a flashback when I looked at this in my earlier life when I was a naval aviator, a Marine pilot.

If you look at the number of accidents and accident rates in naval aviation over that similar period of time, the line looks pretty much the same; that is, when I was a young man back in the 1960s, the naval aviation accident rate was horrific. And today, it is much better. And we have had this sort of trend line.

And there are some key events that took place, and I am working up to a point here, but—some key events that took place over time. One of them was the development of standard operating procedures. You know, in naval aviation, that is pretty easy to dictate.

And you talked about—I am going to kind of scan the panel here. You have over 600 mines operating in the United States. You have your agency overseeing it. You have interaction with labor, with the unions. Is there such a thing?

You talked about, you know, get out, I think, Mr. Friend, you said on your hat. Is there such a thing as a standard operating procedure across the industry that would tell everybody, in red—is it on everybody's hard hat, get out?

I am looking for where would that come from. Is that your job to come up with such a thing? Is it industry's job? Is it a collaborative effort that has to be done with the union?

And I will start with you, Mr——

Mr. FRIEND. We have been teaching and training that for many years, even prior to the MSHA days. That was standard operating

procedure. Where I said we probably failed is we did not reiterate it as much as we should.

Now, in my opening statement, I mentioned that we are working with industry and others to put together a procedure that should be followed in such an event. One of those things will be stressing evacuation.

Mr. KLINE. Well, I really did not mean to address that specific—I am just using that example, that little get out in an hour red and black sign. The point is is there standard operating procedures that is available across the industry that would include things like that.

Mr. FRIEND. I do not know of a template, what each company is using.

Mr. MCKINNEY. We have training plans—excuse me. If I may respond.

Mr. FRIEND. Yes.

Mr. MCKINNEY. We have training plans that we require at every coal mine, and when you hire in at a coal mine, you employ experienced miner trainer or inexperienced miner training—it is required that you are covered with those folks escape and evacuation procedures.

So anybody coming to work at a coal mine—they go through those procedures with them. Then there is annual refresher training once a year.

Mr. KLINE. Okay.

Mr. FRIEND. But in a broader term, I think you are talking about the procedures in case of an emergency, getting the teams there, getting the people who needs to be there——

Mr. KLINE. Right.

Mr. FRIEND [continuing]. The whole thing.

Mr. KLINE. Right.

Mr. FRIEND. And I do not know that—I do not think each mine has a standardized plan, but perhaps Mr. Watzman can——

Mr. KLINE. Well, I would just—I see my time is rapidly expiring. I would just suggest—and that is a fairly useful thing to think about whether it is the industry or the regulators or the miners themselves, to think about how that might come to use.

And then one more comment about that. We found in that same naval aviation analogy that there came to be points where no matter what your SOP said, you needed a change in material. And part of getting that accident rate down was making the flying machines better.

And that gets to the technology point, which I hope that all of us collectively are going to continue to work for. I see my time has expired.

Mr. Chairman, I yield back.

Chairman NORWOOD. Thank you, Mr. Kline.

Ms. Woolsey, you are recognized now for 5 minutes.

Ms. WOOLSEY. Thank you, Mr. Chairman. This is an improvement over our last hearing on the same subject, because at that hearing I remember several people, including a representative from the Heritage Foundation, who had never even been in a mine, who thought he could sit there and tell us how much we did not need the standards and the safety rules that we were working on at that time.

Who can tell me—Mr. Secretary, can you tell me or tell us how many on-site inspections Sago has had over the last 2 years and how many withdrawal and returns at the Sago Mine?

Mr. FRIEND. Well, I can tell you what they had in 2005, and I do not know if——

Ms. WOOLSEY. Well, that is a beginning.

Mr. FRIEND [continuing]. Goes back to 2004 or not, but——

Ms. WOOLSEY. Well, let's have 2005.

Mr. FRIEND. They had their mandated inspections and 208 citations and orders were issued at the Sago Mine in 2005. Eighteen of those were withdrawal orders, where the miner was actually withdrawn and the piece of equipment or the area of mine as shut down, so they lost production.

We increased enforcement that year because of the spike in their incidence rate. Management with MSHA met over 20 times with the management of the Sago Mine.

Ms. WOOLSEY. Well, do you think it is because $60 was a fine instead of a hefty fine?

[Applause.]

Would that have made a different to the——

Mr. FRIEND. And as noted, we are revising part 100.

Ms. WOOLSEY. Well, cause and effect. The Mosaic Company mine in Saskatchewan, Canada had a disaster. All 72 miners escaped. Now, it was not a coal mine. It was a potash mine. It was a fire. But they escaped because they had rescue chambers. They had a place to go while they were waiting to be rescued.

Mr. Watzman, is that one of your recommendations from your organization? I mean, you are the National Mining Association. Would that be a recommendation to MSHA that that be something that we need to——

Mr. WATZMAN. Rescue chambers are being examined currently by our member companies to determine their application in the underground mines. You have touched upon the most important distinction. That was not coal.

The ore body there, in and of itself, did not burn, and they used different mining practices that made that mine accommodating to a rescue chamber. But coal companies are examining the application of those, how to install them, where they might be installed in underground coal mines today.

Ms. WOOLSEY. Well, don't you think that if you were in a coal mine fire, don't you think you would be safer if you were in one of these rescue chambers? Wouldn't you rather a rescue chamber than hanging out there with a red something on your safety helmet that says evacuate, when you do not know where to go?

Mr. O'DELL. Ms. Woolsey?

Ms. WOOLSEY. Yes.

Mr. O'DELL. May I speak to that, please?

Ms. WOOLSEY. Yes.

Mr. O'DELL. First and foremost, we want to be able to get out of the coal mines.

Ms. WOOLSEY. Absolutely.

Mr. O'DELL. And so what we push for as miners is better protected intake escape ways, which has not been done in the past years.

But such as the case that happened at Sago, had they have had mine chambers, those miners would have been alive today. I believe that the best plans go wrong, and we have been in contact with manufacturers out there who build these mine chambers, and we believe they can be used throughout the mining industry.

We have seen them where they can be built for low coal, for high coal. We have seen them to where they can be rubber-tired, to where they can move in and out, rail mounted, as well as able to put them in crosscuts.

So we think that they should be mandated as a backup resort. If we cannot escape, it would be nice to know that there would be some place to go in the event that all else would fail.

Ms. WOOLSEY. Well, thank you. While I have got your attention, would you tell me if there are any other proposed rules that have been withdrawn from MSHA, Mr. O'Dell, that you think make it even more dangerous for miners? Which are the most—the rules that have been withdrawn that make it most dangerous?

Mr. O'DELL. I guess I should also back up and say that in the 1969 and 1977 mine act that the secretary actually mandated that—it was mandated by the mine act that the secretary may require the use of such chambers.

And because the language "may" was there, I guess they never moved on it. But there is language in the mine act that allows that to happen.

Self-contained self-rescuers—we believe we need to improve upon those and move forward with those. We believe those technologies have not moved quickly enough, as we had stated before. Better protected intake escape ways.

We believe that the investigative process being used during mine fatality investigations needs to be improved upon. The problem is that there is a whole world of technology out there, and nobody is talking.

We have actually sat down and talked with folks from NASA. We have talked with folks from the Navy. We have talked with folks from throughout the country who says hey, this technology is here. It is there, but nobody is talking with each other, and nobody makes it apply to the mining industry.

I mean, I would love for everybody at this table or everybody in this room to be able to have the opportunity to sit down and see what is actually available. You would be shocked to find out what there is.

Ms. WOOLSEY. And is not available.

Chairman NORWOOD. Thank you——

Ms. WOOLSEY. Or what is available in the marketplace, you mean, already.

Mr. O'DELL. Well, for instance, communications wise——

Ms. WOOLSEY. All right.

Mr. O'DELL [continuing]. We have been told by the Navy—and there is a group from the aviation department, actually from the Pentagon, who is working on a wireless system right now out of the University of Texas that believes that there is a system that can be applied to the mining industry that can be used to utilize communications not only in the event of emergencies, but we have com-

munication problems on a day-to-day basis, so that could be applied on a day-to-day basis as well.

So the communications systems, we believe, are there. The oxygen systems, whether it be the mine chambers or whether it be new, improved self-contained self-rescuers—it is a shame we have not moved on that.

Chairman NORWOOD. Thank you, Mr. O'Dell. That sounds like a very good hearing for us to bring in some of these experts and see really what is available to us.

I would love to do that, Mr. Owens, if you would work with me on that.

Just quickly, mine arts, you are familiar with those, Mr. McKinney, from Australia?

Mr. MCKINNEY. Yes.

Chairman NORWOOD. Yes. They look pretty neat to me. Maybe we ought to look at one some time.

I want to thank all of you——

Mr. MILLER. May I respond to one question, please? Do we get a second round of questions?

Chairman NORWOOD. No, sir. We are going to have a lot of hearings, though.

Mr. MILLER. Well, this is bullshit. I mean, you have people here.

Chairman NORWOOD. When you get in charge, you get to run the damn thing. Right now, you are not.

Mr. MILLER. No, it is not about being in charge. It is about you have people here——

Chairman NORWOOD. I want to thank each of——

Mr. MILLER [continuing]. To answer questions about the safety—and we do not get to ask the questions.

Chairman NORWOOD. I know I appreciate your time and expertise.

Mr. MILLER. It is incredible.

Chairman NORWOOD. And I expect my colleagues do as well.

Mr. MILLER. First hearing in 5 years, and you cannot have questions at the hearing.

Chairman NORWOOD. As I indicated at the start of this hearing, today is the first of a series of hearings I expect——

Mr. MILLER. No wonder nothing gets——

Chairman NORWOOD [continuing]. Our subcommittee——

Mr. MILLER [continuing]. Done downtown.

Chairman NORWOOD [continuing]. Will conduct in this Congress relating to mining, mine safety and the need for changes, if any.

I expect we will hear more about various legislative proposals from our colleagues in the House and from this subcommittee.

Mr. MILLER. Mr. Chairman, I move that members of the committee have an additional round of questioning, which is the ordinary course of business in every other committee hearing I have been in.

Chairman NORWOOD. That is just not the truth. It has not——

Mr. MILLER. Maybe not where you run them. This is the first time I have sat——

Chairman NORWOOD. There has not been a second round of committee——

Mr. MILLER. We are not having a vote until 3 o'clock.

Chairman NORWOOD. I have another committee hearing going on right now.

Mr. MILLER. No, we have these people here to ask questions about today, about what is going on, when miners and their families want to know what the hell is going on, and the only thing we see is once we had a disaster, they started moving.

Chairman NORWOOD. I apologize, folks. This committee is adjourned.

[Whereupon, at 1:28 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Response From Robert M. Friend, Acting Deputy Assistant Secretary of Labor for Mine Safety and Health, to Supplemental Questions

1. News reports have indicated that MSHA investigators have declined to interview the mine rescue teams which participated in the rescue attempts at the Sago and Aracoma Alma mines. This has caused much concern among the rescue team members, the families of the victims, and the mining communities. Do MSHA accident investigation procedures require such interviews? How can we ensure future rescue teams are prepared for their tasks without interviewing those who have recently had to perform rescue duties?

The MSHA investigations into the Sago and Aracoma Alma accidents are ongoing. I can assure you the necessary mine rescue personnel have been interviewed. With regard to required accident investigation procedures, the investigation team, in consultation with senior MSHA management, has discretion to interview those witnesses deemed necessary to the investigation.

2. The regulations currently provide that with the exception of small and remote mines and those operating under special mining conditions, every operator of an underground mine is to establish or enter into an arrangement for two mine rescue teams to be available at all times when miners are underground. How does MSHA ensure compliance with this requirement? Is this something checked during mandatory and spot-inspections? How many operators have been cited by MSHA over the last year for failure to comply with the requirements of 30 CFR 49.2 and what penalties have been assessed?

Both Metal and Nonmetal (MNM) and Coal Mine Safety Inspectors ensure that the requirements of Part 49—Mine Rescue Teams are being complied with by mine operators during each mandatory regular inspection of underground mines. Four MNM mine operators have been cited during 2005 for violations of 30 CFR 49.2, which are primarily paperwork violations. The assessed penalty for each violation was $60. Five coal mine operators were cited during 2005 for violations of 30 CFR 49.2 and they received similar proposed civil penalties.

3. Has MSHA delegated any responsibility to ensure compliance with this requirement to any of the States? Do any of those states have requirements concerning rescue teams that differ from those under 30 CFR 49.2?

MSHA has not delegated responsibility to ensure compliance with 30 CFR 49.2 to any of the States, and does not have the authority to do so.

4. How many underground coal mines and how many underground MNM mines currently meet this requirement by establishment of their own rescue teams?

Sixty-one MNM mines and 80 coal mines maintain their own mine rescue teams.

5. How many underground coal mines and how many underground MNM mines currently meet this requirement by entering into an arrangement for mine-rescue services rather than establishing their own rescue team? Of these, how many contract with a state to provide rescue services? How many contract with the operators of other mines? Do any contract with local rescue services or fire departments? How does MSHA ensure that these non-resident teams are trained and equipped in accordance with the requirements of 30 CFR Part 49?

- 163 MNM mines and 689 coal mines have entered into arrangements for mine-rescue services.
- 39 MNM mines and 383 coal mines have arranged through the state to provide mine-rescue service.
- 50 MNM mines and 200 coal mines have arranged for mine-rescue coverage with other mines.

• 74 MNM mines and 106 coal mines have arranged for mine rescue coverage with local rescue services or fire departments.

• Physical inspections of independent and contract rescue stations are conducted quarterly by MSHA to verify compliance with the regulations. State mine rescue stations are inspected when such stations are utilized for compliance with Part 49.

6. How many underground coal mines and how many underground MNM mines are currently considered "small" or "remote" for the purpose of this requirement? How frequently does MSHA review their mine-rescue plans?

Forty MNM mines have approved rescue plans under the "small and remote" criteria. Coal has 30 "small" or "remote mines." Annual reviews are conducted to ensure these alternative mine-rescue capability plans are appropriate.

7. How many underground coal mines and how many underground MNM mines currently operate "under special mining conditions" for the purposes of this requirement? How frequently does MSHA review their mine rescue plans?

Eighty-three MNM mines, operating under special mining conditions as set out in Part 49, have approved alternative plans assuring that suitable mine-rescue capability is provided. Annual reviews are conducted to ensure alternative mine-rescue capability plans are appropriate. All underground coal mines are in compliance with rescue team requirements without resorting to the special circumstances test of Part 49. All underground mines have mine-rescue team coverage. MSHA reviews mine-rescue team arrangements during regular inspection activities.

8. What procedures does MSHA have in place to coordinate its activities during an emergency with local first responders such as police, rescue and fire departments? Does MSHA have funds dedicated to training first responders about special needs in mine emergencies? Are mine-rescue teams required to invite local first responders to participate in required training sessions?

The MSHA Metal/Non-Metal directorate maintains a Mine Emergency Plan for each district. This plan includes the contact information for local first responders such as police, rescue and fire departments. Coal Emergency Plans maintained by the MSHA Coal directorate list all applicable emergency numbers including ambulance and first responder contacts. There is no requirement in mine safety standards that mine rescue teams invite local first responders to training sessions; however, it is acceptable to do so. MSHA does not fund training of first responders although MSHA does discuss these issues and works with first responders whenever possible. MSHA has participated in a limited number of drills or training exercises with first responders. MSHA makes every effort to work cooperatively with all State and local authorities during emergencies although the precise protocol is not established by procedures. MSHA is implementing the requirement in the MINER Act that each underground coal mine operator have an approved emergency response plan.

9. Why did this Administration withdraw from its rulemaking agenda initiatives that would have addressed some of the safety hazards that have led to the recent loss of lives underground? Why haven't you restarted each one of these initiatives?

It would be premature to address perceived causes of the two fatal West Virginia mining accidents at the Sago and the Aracoma Alma No.1 Mine and provide presumed solutions before the actual causes have been identified by professional staff trained to render such judgment. MSHA and other authorities are still conducting their investigation to determine the causes of these accidents.

MSHA is unaware of any withdrawn rulemaking initiative that would have prevented the recent loss of lives underground.

In December 2001, MSHA withdrew a rulemaking from our regulatory agenda that would have primarily addressed the service life of Self-Contained Self-Rescuers (SCSRs), and the appropriate inspection of SCSRs, as well as some issues regarding training. In July 1999, MSHA had published an advance notice of proposed rulemaking soliciting information on a variety of issues related to SCSRs but did not propose a rule. A primary objective of this rulemaking initiative was to address the reliability of SCSRs, primarily by shortening the accepted service life of the SCSRs. We determined that this objective could be and was in fact being appropriately addressed by working with NIOSH to increase reliability of SCSRs through improvements in technology. NIOSH and MSHA are currently active in monitoring SCSR performance and NIOSH is testing additional features designed to monitor the reliability of approved SCSR devices.

MSHA and NIOSH have confirmed that the SCSRs used at Sago Mine were all functional and had all been partially used. MSHA has required additional training in the use of SCSRs and we encourage miners to quickly don SCSRs immediately in the event of explosion or fire. MSHA's emergency temporary standard (ETS), pub-

lished on March 9, 2006, assures that miners receive the necessary evacuation training and additional SCSR training under realistic conditions, and that miners have additional equipment available (SCSRs and lifelines) to successfully evacuate the mine during an emergency. We are exploring the efficacy of newer tracking, communication, and other mine rescue technologies to determine if they are safe and effective for use in an underground coal mine environment after a mine fire, explosion, or inundation.

The MINER Act requires operators of underground coal mines to improve accident preparedness and emergency response. They must develop and adopt an emergency response plan specific to each mine they operate. Emergency response plans must address post-accident communication and tracking systems, post-accident breathable air, schedule for maintenance and checking the reliability of self-contained self-rescuers (SCSRs), training for SCSRs and lifelines.

In December 2002, we withdrew an advance notice of proposed rulemaking (ANPRM), which had been on the Regulatory Agenda since 1999. This ANPRM solicited ideas from the mining community about where we might increase flexibility and provide increased safety for miners in our current regulations on mine rescue teams. However, this ANPRM did not produce promising suggestions. The mining community insisted that monetary incentives would be required for mine operators to increase the number of mine-rescue teams. Each of the incentives suggested would have either reduced safety (e.g., decrease the amount of training; reduce the assessed penalties if the mine operator had a mine-rescue team); or exceeded the scope of MSHA's authority (e.g., provision of tax incentives). We continue to promote mine rescue teams and work through non-regulatory means to increase the number of teams. MSHA is implementing requirements in the MINER Act related to mine rescue teams.

10. You have announced you will be using the agency's authority to issue emergency temporary standards to deal with a few of the safety hazards that have received public attention since the Sago accident. On the other hand, you seem to be moving at a much slower pace in adopting rules requiring new communications technologies which could have saved lives in that tragedy? Is this because the industry has threatened you with a lawsuit? What can this Congress do to ensure these life-saving devices get into our mines before more lives are lost?

MSHA is moving expeditiously to implement the MINER Act and other regulations that it believes will further protect miner health and safety.

MSHA's pace in adopting rule changes regarding communications technologies is dependent on the limitations of the currently available technologies and the current state of development of other technologies.

The majority of currently available, MSHA-approved communication systems are dependent on a wire-backbone, or installed wires or cables that provide power and a communication signal. Systems dependent on a wire-backbone would likely be compromised in a fire or explosion which could sever the wire connection rendering the system inoperable. The only MSHA approved system that does not necessarily require a wire-backbone is the Mine Site Technologies Personal Emergency Device (PED) system. MSHA has investigated the PED and determined that it has serious limitations during emergencies, such that making the use of this specific device mandatory would be problematic at this time. First, the system's performance is predicated on the installation of a large loop antenna, which must be installed on the surface for the system to operate during an emergency. Some mines may have too much overburden or do not own the property rights, making surface installation impractical. Second, evaluation of the PED has revealed performance concerns regarding "shadow zones"—certain places in underground mines where there is no signal received by the PED. Third, PED is a one-way paging system, meaning that the message sender cannot receive confirmation that the message has been received.

MSHA is also currently investigating other wireless communication technology. We have received more than eighty (80) proposals in response to our request for communication and tracking system suggestions. None of the proposals received are currently approved as safe for use by MSHA. In reviewing the proposals, there are a number that have great potential. We have selected several of the most promising proposals that offer two-way wireless communications and are conducting field tests of these systems. We plan to evaluate performance and capabilities of these systems and share the findings with all concerned parties. Our expectation is that more state-of-the-art systems will soon be available for America's mines, offering a wider choice of communication and tracking systems with improvements in coverage, reliability and range.

11. For many years, permitting air used to ventilate the mine to run over conveyor belts, which generate friction and sparks, was prohibited by law. Exceptions were

only permitted after a public hearing and a determination by MSHA that the mine operator would observe a set of conditions specifically designed to limit the risk of fire in that mine. This Administration "green lighted" the use of "belt air" with a new regulation. In light of the Aracoma-Alma fire, why isn't MSHA seeking to put a hold on its "belt entry rule?"

The investigation at the Alma No. 1 mine is ongoing, and we cannot yet be certain of its ultimate findings. As the US. Attorney has stated, we have made a criminal referral of the preliminary findings at the Aracoma Alma No. I Mine.

We believe from our preliminary investigation that the use of belt air did not contribute to the severity of the accident. The Aracoma Alma No. 1 belt air petition was approved by the Agency in 2000 and contained routine requirements. The final belt air rule actually increased miner protection at Alma No. 1 by including various requirements that were not included in the granted petition.

MSHA has determined that the recent "belt air" rule increases protection for miners by adding various requirements that were included only in some granted petitions, and by making all mine operators comply with the same strict safety conditions when choosing to use belt air. For example, all sensors must be listed by a Nationally Recognized Testing Laboratory, such as Underwriter's Lab; the trunk lines for the communication system and the Atmospheric Monitoring System (AMS) must be installed in separate entries; carbon monoxide sensors must be installed in the intake escapeways; point-feeds must be monitored; sensor spacing must be reduced to 1,000 feet; alert and alarm levels must be reduced to 5 and 10 ppm; all outby sensors must automatically notify sections of alarms; and lifelines are required when returns are used as alternate escapeways.

The recent "belt air" rule also provides additional protections for use of belt air to ventilate areas where mechanized mining equipment is being set up and removed. Before the "belt air" rule, this practice would have been permitted without additional protections.

Some advantages of using belt air to help ventilate working places include: reducing dangerous methane concentrations; promoting the use of technologically advanced early-warning fire-detection systems; and reducing the number of additional entries required. There are also certain ground control advantages realized by being able to limit the number of development entries, such as reducing the probability of roof falls and rib outbursts. A recent analysis of accident and injury data reveals that there has never been a fatality attributed to fire or air contaminants being carried by belt air to the face of a coal mine.

Since 1978, MSHA has evaluated about 90 petitions for modification to allow the use of belt air to ventilate working places in an underground coal mine. MSHA's experience over more than 25 years has established that the use of belt air is safe, provided that specified conditions, designed to maintain the level of safety and health, are met. The rulemaking itself, which began in 1983, was completed in 2004. There was appropriate notice and comment throughout the history of this rulemaking.

The U.S. Court of Appeals for the D.C. Circuit in International Union, United Mine Workers of America v. Mine Safety and Health Administration, 407 F.3d 1250 (D.C. Cir. 2005), affirmed that the belt air rule did not violate section 101(a)(9) of the Mine Act, which states—

No mandatory health or safety standard promulgated under this title [Title 30] shall reduce the protection afforded miners by an existing mandatory health or safety standard.

MSHA is implementing the provision in the MINER Act related to the use of belt air in underground coal mines.

12. We have seen a news release announcing a new review of the penalty assessment process at MSHA, but nothing more than a news release. What is the scope of this effort and when can we expect some answers?

MSHA published a Notice of Proposed Rulemaking (NPRM) on September 8, 2006. The rulemaking will implement penalty provisions in the MINER Act, and will also revise the existing penalty structure and the process for issuing proposed penalties. This rulemaking is a high priority and will be completed within the required timeframe. Public hearings began in September and will continue in October, 2006.

13. You appear to have succeeded in greatly angering the families of the victims of these tragedies by, to date, keeping them from hearing witnesses who may be revealing information about the last hours of their loved ones. Why did MSHA withdraw proposed rules that would have, after public notice and comment, established procedures for public hearings and accident investigations?

On the contrary, MSHA has taken a number of steps to fully inform the families of the miners who were killed in the Saga Mine explosion, the Aracoma Alma Mine

fire and Darby Co. mine explosion about critical information and the status of the agency's investigations. Ten MSHA officials and technical experts, including the chief accident investigator, met with the Sago families for four and a half hours on March 9, 2006 in Buckhannon, WV. Another meeting of similar length with the Sago families was held on April 13, 2006. At that time, the families were given an advance set of the transcripts of the private interviews conducted during the accident investigation and we again answered questions and discussed the status of the ongoing investigation. On May 2-4, 2006 the Sago families had another opportunity to participate in the investigation by submitting questions to witnesses during the joint MSHA/ WV public hearing into the accident. In addition, MSHA's chief accident investigator has been in regular contact with the two families that were most directly affected by the Aracoma Alma Mine fire and they both have expressed appreciation for the regular updates. MSHA used a similar approach with one of the victim's families from Darby who desired regular updates on the Agency's progress in that investigation. MSHA is implementing the requirement in the MINER Act to establish a family liaison policy.

MSHA's draft procedures for conducting public hearings were never published as proposed rules. The regulatory agenda item relating to public hearing procedures was withdrawn in favor of focusing resources on other priorities.

14. After tragedies like this, how should MSHA's own conduct be assessed? Don't we need some independent jury or body performing this critical function to ensure a full and honest review?

MSHA's long-standing policy to conduct an internal review following each accident that results in three or more fatalities provides a full and honest assessment of MSHA's performance as it relates to an accident—and, in many cases, has led to corrective actions to address issues identified by internal review teams.

MSHA believes in the importance of conducting a thorough review of its own overall performance. MSHA's internal review teams consist of highly qualified, professional MSHA personnel who are outside the district where the accident occurred and independent of the accident investigation team. Team members report directly to the Assistant Secretary for Mine Safety and Health.

An internal review is a thorough examination and objective evaluation of MSHA's enforcement practices at a mine that has experienced a major accident. It is one element of a management system designed to improve the Agency's enforcement performance with the overall goal of preventing future accidents.

The internal review team reviews existing MSHA policies and procedures, inspection records, and data in MSHA's computer systems. The team also interviews Agency employees who perform inspection, investigation, and management functions.

The review team prepares a detailed report documenting its findings and recommendations. MSHA makes internal review reports available to the public and posts the reports on its web site. MSHA believes that interested members of the public should have an opportunity to review the findings and recommendations in an internal review report and to hold the Agency accountable for correcting the deficiencies found.

Numerous positive changes have resulted from internal reviews. Some examples include: better follow up on rock dust surveys; improved documentation of inspections; more appropriate decisions in Safety and Health Conferences following inspections; funding to update the 30-year old Impoundment Design Manual; increased management oversight at the district and national levels; and improved use of enforcement tools provided by the Mine Act.

MSHA policy requires an internal review after each mining accident that results in three or more fatalities. For example, an internal review is underway into the Darby mine accident where five miners lost their lives. There may be other circumstances when the Assistant Secretary will direct that an internal review be conducted. An example of one of those internal reviews is the internal review conducted after the Martin County impoundment failure which did not cause a loss of life but did cause substantial environmental damage. The mine fire at the Aracoma Mine, in which two miners were killed, is also the subject of an internal review by the Agency.

15. Are decisions about mine safety and health being made by MSHA's technical experts, or are non-expert appointees in other parts of the Department of Labor calling the shots?

MSHA conducts its business by and through its core component of dedicated mine safety and health professionals who inspect mines and enforce the law on a daily basis. In addition, they handle everything from day-to-day matters to emergency situations. In every instance, issues are addressed and decisions are made with the

health and safety of our Nation's miners as the primary concern of these safety and health professionals. These individuals provide the key experience and decision making capability necessary to address mine safety and health matters.

16. Self rescuers only provide about one hour's worth of oxygen, and MSHA only requires operators to provide one for each underground miner. Why hasn't MSHA required more? Isn't it true that it could often take more than an hour to evacuate a mine?

MSHA has issued an Emergency Temporary Standard (ETS) which has increased the stocks of SCSRs available and established safe cache locations which are well within reach of a single SCSR to address longer distances in the larger and deeper mines and mines that have obstacles which prevent direct egress.

On March 9, 2006, MSHA's ETS went into effect, requiring at least one additional SCSR per miner. MSHA inspectors are currently reviewing mine operator storage plans for caches of extra SCSRs including determining that the first SCSR will last to the cache point. We are doing this to ensure the appropriateness of the SCSR cache location but in addition we have an additional opportunity to monitor SCSR use. MSHA's ETS takes into consideration that in some mines and in some circumstances, it may take more than one hour to exit the mine or to reach a safe breathing area, and thus requires caches of additional SCSRs in both required escapeways if it takes more than one hour to evacuate a mine. The preamble contains an extensive discussion of these issues. The full text is available at *http://www.msha.gov/KEGS/FEDREG/FINAL/ 2006finl/ 06-2255.pdf.*

MSHA is also implementing MINER Act requirements. For example, MSHA has issued a Program Policy Letter which provides guidance to mine operators to facilitate the development of their Emergency Response Plans. On August 30, 2006, MSHA published a Request for Information in the Federal Register in order to solicit information and develop further guidance for mine operators in assuring that the plans provide safe and reliable post-accident breathable air supplies for trapped miners. MSHA has also participated with stakeholders in information meetings about the new MINER Act held across the country.

17. Do you know how many mines currently meet the requirements for having at least two mine rescue teams within two hours of the mine?

All Coal Mines are in compliance. One hundred thirteen Metal Nonmetal mines have at least two mine rescue teams within two hours of their mine.

18. When the Bush Administration withdrew a Clinton-era proposal that sought to increase the number and availability of mine rescue teams, the Administration stated that it planned to evaluate non-regulatory alternatives to that proposal. at have you done to evaluate those non-regulatory alternatives? What have been the results of your evaluation thus far?

The number of mine rescue teams has declined over the years, as has the number of mines. MSHA looked at regulations that would increase the number of these teams and held a public meeting in March 2002 in Barbourville, Kentucky to gather current ideas and suggestions concerning mine rescue capabilities and preparedness. Both labor and industry stated that cost is the major factor considered in establishing a mine rescue team. Recommendations to MSHA focused on incentives, particularly reducing penalties for violations if a mine had a mine rescue team. Legally, MSHA could not adopt that approach. Therefore, MSHA withdrew the mine-rescue agenda item (no proposal was ever published) and issued two Program Information Bulletins that addressed mine rescue cost concerns related to training and technical assistance. The Administration continues to offer assistance for mine rescue team training and drilling. In addition, the Administration has revitalized the Mine Rescue Team Contests; the National Contest last fall drew the largest number of teams in recent years. MSHA is implementing requirements in the MINER Act related to mine rescue teams.

19. What is the state of your inspector workforce? In a September 2003 report, the GAO warned that 44 percent of MSHA's inspectors would be eligible to retire within 5 years. Are we facing a shortage of qualified mine inspectors?

STATUS OF COAL ENFORCEMENT PERSONNEL AS OF 6/30/06

	2006
Underground Inspectors	274
Surface Inspectors	53
Specialists	168

STATUS OF COAL ENFORCEMENT PERSONNEL AS OF 6/30/06—Continued

	2006
Trainees	92
Total	587

No. MSHA is not not facing a shortage of qualified mine inspectors. It is certainly true that a significant number of federal mine inspectors are eligible to retire within less than five years, but our experience has been that MSHA's employees do not exercise their retirement option as soon as they are eligible. However, MSHA has taken steps to anticipate coming retirements, by recruiting qualified candidates through aggressive on-going job fairs in each district and reducing the time required to hire inspector trainees. Still, while we have reduced the hiring time for inspectors to approximately 45 days, it takes 18 months to fully train an inspector. The rate of attrition and training time, along with an increase in the mining industry's activity and the competition with the private sector for promising candidates remain challenges for MSHA. MSHA is currently moving promptly to recruit and train coal enforcement personnel, as called for in the FY 2006 Emergency Supplemental Appropriations Act for Defense, Global War on Terror, and Hurricane Recovery.

20. What impact has the loss since 2001 of 190 authorized coal enforcement personnel had on MSHA?

These changes have not had an adverse impact on enforcement. To the contrary, in both metal/nonmetal and coal, MSHA is conducting more inspections than five years ago, and has increased its mandated inspection completion rate since 2000. On the coal side, MSHA has improved its required regulatory inspection completion rate from 98.3% in 2000 to 99.6% in 2005.

Since 2001, the coal mining sector has seen a 6% reduction in the number of mines. During this period, MSHA adjusted its internal structure to correspond to the workload decrease by consolidating administrative support operations, allowing resources to be dedicated to its core functions. The vast majority of the decrease in staffing levels since 2001 have occurred in the administrative and support components of the Agency. Increased automation and use of technology enabled MSHA to reduce the number of staff needed to effectively perform the functions. In 2005, we saw a moderate increase in the number of mines and miners as the industry stepped up production to meet the demand for this increasingly vital resource. MSHA once again looked at its structure and processes and identified areas for improvement that enabled it to attain the safest year in history.

21. When the Administration withdrew the Clinton-era proposal to improve the use of self-contained self-rescue devices, the Administration said it was withdrawing the item "in light of resource constraints and changing safety and health regulatory priorities." What were those resource constraints? What were those changing safety and health regulatory priorities?

The issue noted in your question had been on the Agency's regulatory agenda as an advance notice of proposed rulemaking (ANPRM)] for four years before this Administration took office without a rule being proposed. This Administration revised the regulatory agenda upon taking office to provide a roadmap for regulatory actions that would be realistically addressed and completed and that were in active status.

Self-contained self-rescuers (SCSRs) are closed circuit breathing apparatuses that provide a source of oxygen and greatly increase a miner's chance of surviving a mine emergency involving an irrespirable atmosphere. This agenda item would have addressed the inspection and service life of these breathing devices, as well as training requirements for their use and storage. We determined that additional testing and monitoring was a necessary predicate for rulemaking. Currently, NIOSH is working on a proposed rule to address reliability. MSHA is assisting NIOSH in the development of that rule. MSHA and NIOSH have a long-term protocol to take SCSRs out of service from mines (and replace them) in order to test the functionality of SCSRs at all stages of their shelf life. In addition, any report either agency receives of a defective or less than fully functional SCSR is fully investigated.

MSHA's other priorities over the succeeding years have included lowering the permissible exposure limit for asbestos exposure; developing a final rule for diesel particulate exposure; finalizing a rule for hazard communication; proposing rules on respirable coal mine dust and a continuing collaboration with NIOSH to develop a personal continuous dust monitoring system; publication of a final rule on independent laboratories to allow alternative testing and evaluation requirements to bring technological innovations to the U.S. mining market more quickly; a final rule

on methane monitors and roof bolting equipment; a final rule on belt entry ventilation; a final rule on approval fees for testing; an ANPRM on substance abuse; and a final rule on training for shaft and slope construction workers as well as a final rule on the use of low and medium power electric generators at underground coal mines. MSHA is moving very expeditiously to finalize the Emergency Temporary Standard (ETS) issued in the aftermath of the Sago and Aracoma Alma mine accidents. Provisions in the ETS will greatly improve mine operator emergency preparedness and a miner's chances of safely evacuating an underground coal mine when a mine emergency occurs. In addition, MSHA is implementing MINER Act requirements designed to improve mine safety rescue and emergency response technology. The MINER Act requires that MSHA issue regulations addressing: (1) mine rescue teams at underground mines; (2) civil penalties at all mines and (3) seals at underground coal mines. MSHA expects to be able to fully meet this ambitious rulemaking agenda in FY 2007.

22. A February 27, 2006 article in USA Today stated that "federal inspectors routinely concluded that safety violations at the Sago Mine endangered only one person, findings that helped keep fines to a minimum before the disaster killed 12 miners in January." We understand that, if a violation is deemed to endanger more than one person, the fine may go up dramatically.

a. Sago had six citations for blocking escapeways that miners use to flee a fire or explosion. Each citation said only one miner was endangered by the blocked escapeway. The mine paid $60 fines for each of two such violations. Why would only one miner be endangered by a blocked escapeway?

b. On August 16, 2005, an inspector found "chemical smoke" being blown toward areas where two mining teams were working. A team typically has eight to ten miners. The citation said one miner was endangered. Why would only one miner out of a total of two mining teams be endangered by chemical smoke?

c. Sago was cited for 22 violations from July 2004 to December 2005 for "accumulation of combustible materials"—coal dust and coal chunks that can spread fires and explosions. All 22 violations said one miner was endangered. Why would only one miner out of an entire underground workforce be endangered by the accumulation of combustible materials each time? Across the board, is this a common practice? What does it accomplish other than deflating the fines that may be assessed for a safety or health violation?

MSHA is currently conducting an Internal Review of all inspection and associated activities at Sago mine. The severity of the risk posed by the violation (number of persons affected) and negligence will be addressed by the review. To preserve the objectivity and independence of the Internal Review team, it would be inappropriate for MSHA to prematurely draw conclusions.

Response From Bruce Watzman, Vice President Safety, Health, and Human Resources, National Mining Association, to Supplemental Questions

NATIONAL MINING ASSOCIATION,
CONNECTICUT AVE., NW,
Washington, DC, March 29, 2006.

Hon. CHARLIE NORWOOD,
Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce, 2181 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for providing us the opportunity to appear before the Subcommittee earlier this month to share the views of the members of the National Mining Association on "Evaluating Health and Safety Regulations in the American Mining Industry."

Attached are responses to the questions I received following my appearance.

We look forward to working with you and the members of the Subcommittee as you consider legislation to advance mine safety.

Sincerely,

BRUCE WATZMAN,
Vice President Safety, Health, and Human Resources,
National Mining Association.

1. Is the NMA prepared to support any of the legislation that has been introduced to-date in the U.S. House of Representatives of the U.S. Senate?

Response: We support several of the concepts contained in legislation that has been introduced but have concerns with other components of the pending measures. As stated during my appearance before the Subcommittee on March 1, 2006, we

have developed the following set of guiding principles that we believe should be reflected in legislation:

- Expediting development and introduction of ground penetrating communication and tracking technology;
- Improving emergency notification;
- Enhancing safety training and rescue capabilities;
- Providing a liability shield and indemnification for mine rescue activities;
- Ensuring that new requirements are accompanies by workable transitional timeframes;
- Providing authority for mine operators to conduct mandatory substance abuse testing of all personnel at the mine; and
- Providing tax incentives to help companies invest in equipment and training needed for enhanced mine safety and rescue capabilities.

2. You remember the efforts of this House about a decade ago to eliminate the Mine Safety and Health Administration (MSHA), to cut the number of mandatory inspections, and to otherwise weaken protections to this Nation's mines. Did you organization support these efforts? Does your organization believe any strengthening of the law is required, for example to deal with scoff-laws who refuse to pay penalties after all adjudication is completed?

Response: We do not support efforts to eliminate the Mine Safety and Health Administration, nor do we support a cut in the statutory requirements that each underground mine be inspected four times per year and each surface mine twice per year. We do believe however that the manner in which inspections are conducted needs to be revised to reflect industry operational changes that have taken place since the law was passed. We submit that providing the agency with the ability to focus its resources on those who persistently ignore citations and penalties would supply a more effective deterrent to those who chose to ignore the law.

3. It is widely accepted in Australia and other nations that a safe and healthful mine is a productive mine. Given this country's increased demand for coal, isn't it the obligation of this Congress to give MSHA more vigorous enforcement authority so it can ensure that each mine operator understands this simple but fundamental guiding principle?

Response: The guiding principle that a productive mine is a safe and healthful mine is well-understood and followed in the United States. As the information we have furnished the Subcommittee demonstrates, as coal mine productivity improved accidents and injuries have declined. The Mine Act vests MSHA with significant enforcement powers, including the authority to close a portion of a mine or have removed from service equipment that presents an imminent danger hazard to miner's safety and health. This authority, when correctly applied, has proven sufficient to improve safety performance at our nation's mines.

4. What does your organization think about a user fee which would fund MSHA compliance assistance activities so that it would be able to provide you with such services while using the taxpayers' money to fund enforcement?

Response: We do not believe that a "user fee" is necessary or appropriate. Compliance assistance activities are, in truth, an integral part of an inspector's work protocol. As such, it would extremely difficult and burdensome to require inspectors to allocate their time spent at the mines to differentiate between what one would deem to be "compliance assistance" activities as opposed to enforcement activities. Other agencies, such as the Occupational Safety and Health Administration and Environmental Protection Agency, which have established and administer compliance assistance programs do not, to our knowledge, charge user fees for those activities

Additional Materials Submitted by Dennis O'Dell, Administrator for Department on Occupational Health and Safety, UMW

United Mine Workers of America

TELEPHONE
(703) 208-7200

UNITED MINE WORKERS' HEADQUARTERS
8315 LEE HIGHWAY
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22031-2215

March 27, 2006

Charles Norwood, Chairman
Subcommittee on workforce Protections
Committee on Education & the Workforce
U.S. House of Representatives
B-346 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Mr. Norwood:

Thank you for allowing me the opportunity to testify on March 1, 2006 at the hearing on "Evaluating Health and Safety Regulations in the American Mining Industry." This letter is in response to the additional questions submitted by Representatives Mr. Major R. Owens and Mr. George Miller and as a follow up to my testimony.

Question (1) Why do you think MSHA has yet to require mine operators to use a continuous dust monitor to help bring new cases of black lung disease to an end?

Answer: This is been a question that miners have asked for many years. I think you need some background information on what this Agency attempted under this Administration on a previously proposed dust regulation.

On March 6, 2003, MSHA issued a proposed rule to overhaul the coal mine dust sampling program. The proposed rule was extremely complex, difficult to understand and filled with exemptions and loopholes. The following is a brief summary of what it would have done:

a) Compliance dust sampling would have been cut by 90%. Mining sections could have had as few as three shifts sampled a year compared to the thirty-four shifts currently sampled. Other sections of a mine would have been sampled only once a year.

b) Instead of requiring decreased dust levels in the mine, the proposed rule would have allowed dust levels to be increased <u>four</u> times the limits currently permitted. Congress set a 2mg/m3 dust standard in the 1969 Mine Act. The 2003 proposed rule would have allowed compliance samples up to 8mg/m; MSHA would not have cited the mine operator until the dust levels exceeded 9.32mg/m3.

c) Instead of the currently required environmental/engineering controls, the proposed rule would have allowed mine operators to increase the dust levels by requiring miners to wear a type of respirator that has been found to be faulty. The Mine Act specifically prohibits using such "administrative" controls, and generally requires use of environmental and engineering controls.

d) The mine operator, not MSHA would have conducted the dust sampling test to verify the dust control plan. MSHA also estimated that about 85% of the mine sections would have been exempt from a follow up plan verification sampling.

e) With specific reference to continuous monitors, the proposed regulation included provisions for mine operators to use these devices, but given other aspects of that proposal, this aspect would not have been exercised.

There has been much progress with the development of the Personal Dust Monitor (PDM), a device designed for continuous monitoring of a miner's daily dust exposure. Units have been successfully tested in laboratories and underground mines. Results have shown that the units provide accurate readings of a miner's dust exposure, are rugged enough to survive the underground mine environment, and provide data on instrument faults and tampering. The timely PDM dust exposure data provided information that results in quicker recognition of the failure of engineering dust controls. This type of information enables both miners and management to prevent overexposure to coal mine dust. Miners can quickly learn to better reduce their dust exposures by minimizing certain actions and better position themselves during mining activities.

There is still much debate on who should bear the costs of the Personal Dust Monitors. Some say the Government should purchase them, while others say mine operators should purchase them. Too many within the mining community believe these units would be a financial burden, even though the Federal Agency has with a limited budget and should not bear the cost. If operators must pay, the discussion has centered on an unfair advantage where larger companies may be forced to purchase units while smaller companies claim they cannot. The debate continues with no real movement of a rock solid rule that would require that each and every miner is to be equipped with a continuous dust monitor, such as the PDM. Only if every miner has equal use of a PDM, regardless of the size of the operation where he works, will the PDM be feasible as a tool for reducing dust exposure.

Question (2) The mining industry has recently renewed its efforts to bring in foreign workers to operate the nations mines. Aren't there plenty of our own young people who have gone through the basic training required for these jobs? Does this body need to do something more to help ensure the new generation of miners is trained in avoiding safety and health hazards?

Answer: There are a large number of newly-trained miners and laid-off experienced miners who are available for employment today. Laid-off experienced miners are accustomed to a good standard of living. The industry no longer wants to provide the same wages and benefits that these miners are

accustomed to receive. The truth of why operators want to bring foreign workers into the industry is to take advantage of cheap labor. The United Mine Workers of America has a Career Center that is designed to train new miners for our future needs. We have already trained miners who are actively working miners today.

One way Congress can assure that the industry is prepared to have more miners in the future, which the industry will continue to need, is to make sure Federal and State grants are given to training centers such as the UMWA Career Center.

Question (3) The UMWA serves as miners' representatives in the Sago investigation. Could you describe the role of a miners' representative in an investigation? Has the miners' representative been permitted to attend all the witness interviews at Sago?

Answer: A miner's representative plays a very important role during an investigation. Miner's representatives have great expertise, in some cases even more than the Federal, State, and Company personal appointed to the investigation. Miners' representatives are very valuable to uncovering what were the root causes for a fatal or accident that occurred at their mine because of their familiarity with the mine profile, and their special relationship with miners who are sometimes reluctant to share their concerns with company or government personnel. Miners' reps are the only unbiased members of an investigative team; they have no other motive but to get to the truth of what happened. The Company doesn't want to uncover something that places fault with them. The State and Federal investigators also may be reluctant to uncover something that would indicate their organization overlooked something during their inspections. That leaves the miners representative.

At Sago, the UMWA has not participated in any of the witness interviews despite our status as a miners' representative for miners at Sago, and despite our presence and repeated efforts to attend these interviews. Moreover, families of deceased miners have also asked the UMWA to represent their interests and their requests have not been honored either. The only people who have been a part of the interview process at Sago have been the Company, State, and Federal representatives.

Sincerely,

Dennis B. O'Dell

Dennis B. O'Dell, Administrator
Department of Occupational
Health and Safety

Rules in various stages of development that were withdrawn under this Bush Administration

- Occupational Exposure to Coal Mine Dust (lowering exposure limits)

The initial action was taken in July of 2000 and the proposal was in the pre-rule stage when it was withdrawn by MSHA on September 4, 2002. The premise of the proposed rule was to comply with the recommendations of the 1996 Secretary of Labor's Advisory Committee on the Elimination Pneumoconiosis Among Coal Mine Workers and decrease the level of respirable coal dust miners could be exposed to during a working shift. By cutting the permissible level in half, miners would be less likely to contract this debilitating disease. Application of such a standard would also have significantly reduced the amount of highly explosive float coal dust released into the mine atmosphere. Such a regulation would have significant health and safety benefits for underground miners.

- Mine Rescue Teams

The initial action was taken in May of 2000 and the proposal was in the pre-rule stage when it was withdrawn on September 4, 2002. The basis for moving this rule forward is quite simple: both the UMWA and many industry officials recognized that as mining operations contracted in the late 1980's through the 1990's, the number of mine rescue teams was being disproportionally reduced. This left large coverage gaps for mining operations in the event of an emergency. The industry was also facing an overall aging of the workforce which adversely impacted participation in the rescue teams that remain active. In May of 2000, MSHA viewed the situation to be so serious that it published the pre-rule noting "We are assessing the current regulations to identify problem areas where we might increase flexibility and increase safety for miners."

- Air Quality, Chemical Substances and Respiratory Protection Standards

This rulemaking began with a preproposal draft in 1983 and a proposed rule in August, 1989, with hearings conducted and comments submitted. Sections of the proposed rule were finalized, but the air quality component was never finalized. It was withdrawn on September 26, 2002. The Agency stated that "The current regulations for exposure to airborne contaminants are over 25 years old. They do not fully protect today's miners who are exposed to an array of toxic chemicals and other hazards." MSHA withdrew the rule as a result of "...changes in agency priorities and the possible adverse effects of case law."

- Metal/Nonmetal Impoundments

The initial action was taken in January of 2001 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2001. The Agency recognized that these impoundments were within flood ranges of homes and well-traveled roads. They were concerned that an impoundment failure could endanger lives and cause property damage. MSHA withdrew

this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Surface Haulage

The initial action was taken in July of 1998 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2001. Agency data demonstrated that 30% of all surface mining fatal injuries involved surface haulage equipment. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Respirable Crystalline Silica Standard

The initial action was taken in February of 2001 and the proposal was in the pre-rule stage when it was withdrawn in May of 2001. Current regulations set limits on exposure levels for crystalline silica. The Agency was aware that conditions in the industry resulted in overexposure and needed to be updated to eliminate this hazard. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Requirements for Approval of Flame Resistant Conveyor Belts

The initial action was taken in December of 1992 and the proposal was in the final action stage when it was withdrawn on September 24, 2001. While current regulations were in place to require the use of flame resistant belts, the Agency did not see them as sufficiently protective. The new regulation would set new procedures and requirements for the testing and approval of mine conveyor belts. MSHA gave no reason for withdrawal.

- Confined Spaces

The initial action was taken in December of 1991 and there had been no activity on the proposal when it was withdrawn on August 16, 2001. The Agency had identified hazards that existed in and around storage bins, hoppers, tanks, stockpiles and other confined spaces. These hazards included entrapment of miners by shifting piles of loose materials, falling into materials, and being struck by overhanging materials. MSHA also expressed concern about exposure to toxic substances and physical hazards inherent in confined spaces. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Safety Standard Revisions for Underground Anthracite Mines

This was withdrawn on August 16, 2001. MSHA had articulated the concern that current regulations do not take into consideration the unique aspects of anthracite mining. Mining methods, coal volatility and other aspects of the process are not appropriately covered by current

MSHA regulations.

- Electrical Standards for Metal/Nonmetal Mines

The initial action was taken in April of 2001 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2004. The Agency had identified injury-causing hazards associated with electrical equipment. It was considering a rule to address grounding problems with that equipment. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Training and Retraining of Miners

The initial action was taken in October of 1998 and there was no activity on the proposal when it was withdrawn on September 24, 2001. This critical proposal would have increased the number of hours operators are required to set aside annually for health and safety training of miners. This training includes: first aid, donning and using a self-contained self-rescue device and exiting the mine in the event of an emergency. The Union has made comments at every public hearing the Agency has conducted over the last six (6) years, stating that the training requirements are inadequate and must be revised. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities." MSHA said it determined sufficient progress had been made to eliminate the need for regulation.

- Surge and Storage Piles

The initial action was taken in March of 2001 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2001. MSHA stated that it "had documented a number of accidents involving miners operating vehicles and equipment on surge piles. The current standard only prohibits persons from walking on or standing around surge piles where a hazard may exist. We are considering rule-making to expand the existing standard to address vehicles and equipment." MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Escapeways and Refuges

The initial action was taken in July of 2001 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2001. This was a metal/nonmetal rule that was intended to afford miners in those industries two separate and distinct escapeways. Current regulations do not require this. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Accident Investigation Hearing Procedures

The initial action was taken in January of 2001 and the proposal was in the pre-rule stage when it was withdrawn on August 16, 2001. The rule was designed to clarify and codify the accident investigation procedures. There are currently no rules that layout any consistently followed guidelines for these investigations. The rules can be changed and challenged at any time by parties involved in the process. This is a major concern especially in light of the exclusion of designated miners' representatives from the Sago interviews. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Verification of Surface Coal Mine Dust Control Plans

This was withdrawn on August 16, 2001. Based on the recommendations of the 1996 Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, which highlighted respirable dust problems at surface mines, the Agency determined rule-making was necessary to eliminate this hazard. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines

This was withdrawn on September 24, 2001. The Agency had recognized the need to monitor respirable dust at all times miners are subjected to the mine atmosphere. Technological developments had progressed to the point that the personal dust monitor was a feasible device to deal with respirable dust liberation in the industry. Controlling this dust was a crucial element in the elimination of black lung disease. MSHA withdrew this entry from the agenda, stating "...in light of resource constraints and changing safety and health regulatory priorities."

- Underground Coal Mining, Self-Contained Self-Rescuerer Service Life Approval and Training

The initial action was July of 1999 and the proposal was in the pre-rule stage when it was withdrawn on September 24, 2001. The use of these devices in their current form has not changed since they were first introduced into the mining industry over two decades ago. Over that period of time, some of the devices were found to be inoperable for a variety of reasons such as deteriorating hoses, contaminated chemical beds and unrealistically long shelf life approvals by MSHA. Also, in many instances miners have been unable to properly don the units in emergency situations. MSHA withdrew this entry from the agenda, stating "... in light of resource constraints and changing safety and health regulatory priorities."

Text of the note that Mr. Hamner left in his lunch bucket for his wife and daughter. Mr. Hamner died in the Sago mine disaster.

George Junior Hamner
1951-2006

Side 1

Hi Deb & Sara
I'm still OK at
2:40 p.m. I don't
know what is
going on between
here & outside.
We don't hear any
attempts at drilling
or rescue. The
section is full of
smoke & fumes
so we can't escape.
We are all alive
at this time.
I just want
you & Sara to know

Side 2

I love you both
and always have
Be strong and I
hope no one else
has to show you
this note. I'm
in no pain but
don't know how
long the air will
last. Tell everyone
I'm thinking of
them especially
Billy, Marion, Will
Bill & Peg. I love
you all.
Junior Hamner
1-2-06

Prepared Statement of Charles E. Hawkins III, CAE, Executive Vice President and COO, National Stone, Sand, & Gravel Association

Mr. Chairman, the National Stone Sand & Gravel Association (NSSGA) appreciates the opportunity to submit a statement for the record of this mine safety hearing.

Based near the nation's capital, NSSGA is the world's largest mining association by product volume. Its member companies represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the U.S. and approximately 115,000 working men and women in the aggregates industry. Sale of natural aggregates (crushed stone, sand and gravel) generates nearly $38 billion annually for the U.S. economy. The estimated output of aggregates produced in the first half of 2005 was 1.3 billion metric tons, a four percent increase over the same period in 2004 (2.85 b MT). According to the U. S. Geological Survey, the significant increases in aggregates production were due to the increase in construction activity, which has risen every year for the past decade. Construction spending amounted to $617.9 billion during the first half of 2005, a nine percent increase over the same period in 2004.

Aggregates are used in nearly all residential, commercial and industrial building construction and in most public works projects, such as roads, highways, bridges, railroad beds, dams, airports, water and sewage treatment plants and tunnels. While the American public pays little attention to these natural raw materials, they go into the manufacture of asphalt, concrete, glass, paper, paint, pharmaceuticals, cosmetics, chewing gum, household cleansers and many other consumer goods.

The disasters in the Sago Mine and Aracoma Coal Alma No. 1 Mine are tragic and the loss of even one life, let alone 14 lives, is devastating. Nevertheless, the safety record of the mining industry, and the aggregates industry in particular, has improved due to a heightened level of effort invested by the industry to sustain an improved performance. The improvement in the aggregates industry safety record is attributable to a combination of more effective safety and health programs developed and implemented by the industry over the past decade.

The first priority for the aggregates industry is and will continue to be the safety and health of its miners. The industry recognizes that its employees are its most valuable asset, an asset that must be protected for the well being of the industry now and in the future. As the workforce ages, it has become increasingly difficult to recruit new miners to the industry. Maintaining an excellent safety record through the implementation of effective safety and health programs is considered a critical element for attracting and keeping a highly skilled workforce.

Members of the National Stone, Sand & Gravel Association have developed and agreed to a set of guiding principles to assist member companies in their efforts to understand the importance of safety to their individual organizations as well as to the industry as a whole. In addition, a safety pledge was developed in 2002 incorporating the safety guiding principles. More than 90 percent of the operations of NSSGA member companies are now covered by this pledge, signifying the importance of safety and a commitment toward ensuring the safety and health of all their employees.

It is important to recognize that underground aggregates operations present a much lower risk than other underground mining sectors because of the nature of the mined product and the mining methods used to extract the material. Specifically, aggregates products are non-combustible, non-flammable minerals. As a result, the probability for fire is very low. Since there are no flammable gases present and the material does not act as a fuel, specialized equipment is not needed in aggregates underground mines. The mining methods used, called "room and pillar," create large open spaces adequately supported by the material left in place. This technique minimizes the need for extra support for the mine roofing. These mines are generally only a few hundred feet deep and have entrances suitable for large material handling equipment like front end loaders and haul trucks. These large entrances also provide access for emergency equipment minimizing the need for specialized mine rescue teams and equipment. Natural ventilation is often adequate for providing adequate air to miners underground.

Recent news articles have ascribed some of the responsibility for the Sago incident to the cooperative alliances MSHA has signed with the industries it regulates, implying an inappropriately close relationship. We would argue the opposite. The NSSGA and MSHA formalized the first such alliance in 2002, setting forth a cooperative agreement to develop programs and tools for the improvement of safety and health in the aggregates industry. The resulting reduced incidence rates speak for themselves.

It should also be noted that MSHA has similar alliances with labor organizations, including the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and the International Union of Operating Engineers. Important alliances also exist with the National Safety Council and the American Society of Safety Engineers. Through these alliances, MSHA has been able to enhance its mission of protecting worker safety and health

Another collaborative effort resulted in the MSHA Part 46 "Training and Retraining of Miners" regulation in 2000. This excellent regulation ensures every miner knows and understands how to perform their job (all miners know and understand how to perform their jobs OR every miner knows and understands how to perform his or her job) safely by covering the important safety and health information prior to starting work and annually thereafter. This regulation was developed collaboratively, with input from both labor and industry groups, guaranteeing support of the rule by all involved stakeholders and assuring their commitment to the ultimate goal of injury reduction. The Coalition for Effective Miner Training included many industry groups working in a joint industry/labor arrangement in conjunction with MSHA to develop an effective standard for the aggregates industry. The Part 46 regulation resulted from this effort.

In another example, the NSSGA and MSHA developed a cooperative workplace-based sampling training program of noise and dust monitoring workshops. A partnership agreement was signed and the training workshop program launched on December 1, 1997. These workshops have been given to industry representatives using training specialists from the Mine Safety Academy every year since 1997. These workshops have won two awards from Innovations in American Government for this joint venture aimed ay reducing hearing loss and silicosis through a program of recognition, evaluation and control of workplace hazards.

The NSSGA/MSHA alliance was further enhanced by an ad hoc coalition consisting of the U.S. aggregates industry (NSSGA and MSHA) and the quarrying industry (Health & Safety Executive and the Quarry Products Association) in the England. This informal alliance was developed to share best practices between the countries in a similar industry.

Based on the sharing of information about successful programs in the England, the NSSGA/MSHA Alliance has moved forward with joint efforts to implement programs that will further improve the safety and health of U.S. aggregates miners. The alliance first assembled a Data Mining Task Force to review the incident data (not fatalities) with the hope of elucidating specific areas where efforts could be targeted to reduce injuries. It is this focus on incidents, rather than the focus on fatalities, that offers the best chance of improving the safety performance and at the same time reducing fatalities.

Simultaneously, the alliance began working on a model safety and health program to take the best of industry and develop a model that could be used by both small and large aggregate producers to develop a safety management system. This resulted in the publication in December 2005 of the "Core Principles of a Safety Program" by the Alliance. It is available free on the MSHA and NSSGA websites.

At present, the Alliance is working on promoting safety and health through the publication of "rip & share" safety tools in the bimonthly association magazine and articles on timely safety topics for the industry to use in improving their safety programs. MSHA and NSSGA member company representatives jointly develop these tools. The cooperative relationship has made great strides toward improving the safety of the aggregates industry.

You can see this clearly using the data required to be submitted by mine operators on injuries/illnesses and manhours. The attached chart "Comparison of Aggregate Industry Workhours vs. Incident Rates" shows that even with an increasing number of hours worked at aggregates producers' sites there has been a significant reduction in the total incidence rate in the industry. The second chart "Aggregate Industry Incident Rates 1989—2004" shows this data broken down by aggregates industry sector. More progress has been made since 2002 through the cooperative efforts of the NSSGA/MSHA Alliance.

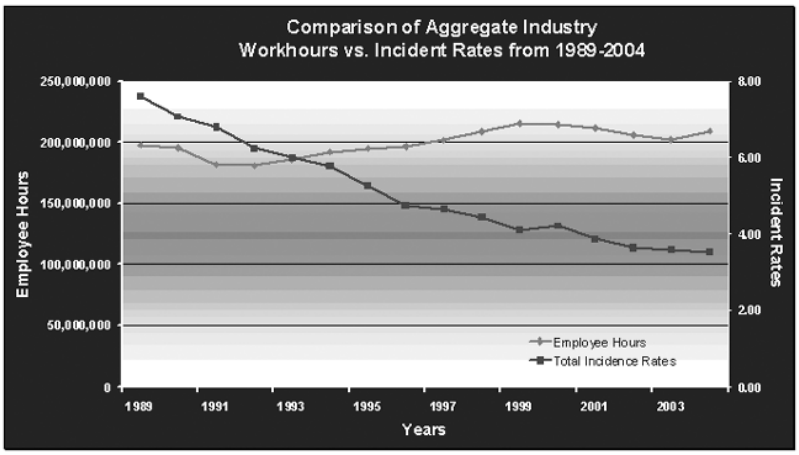
In no way does the NSSGA/MSHA Alliance interfere with the compliance program of the agency. MSHA has an important role in ensuring that safety at aggregates mines and quarries maintain standards that protect employees. The MSHA enforcement program operates independently of any of the cooperative industry alliances. The Mine Safety Act, unlike any other safety agency, requires complete inspections of every mine property 2 or 4 times per year depending on whether it is surface or underground, respectively.

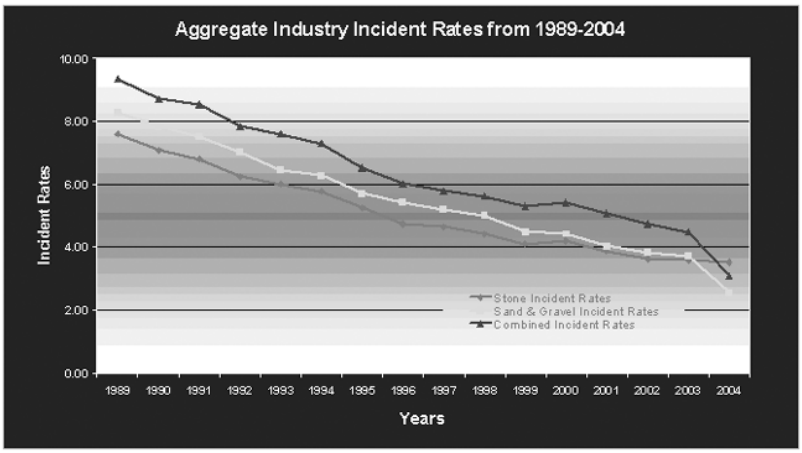
The mining industry is more heavily regulated and inspected than general industry covered under the Occupational Safety and Health Administration regulations. It is important that caution be exercised before rushing to impose more regulations

on the mining sector. Careful study of the programs in place must be made and effective enforcement ensured.

NSSGA believes that the cooperative relationship the aggregates industry has developed with MSHA has led to increased safety for aggregate industry employees. We believe that these relationships rather than being discouraged should be encouraged. They are especially helpful to the small- and medium-sized companies that are unable to afford a staff safety professional by providing the mechanisms necessary for continuous improvement to the safety and health of aggregate workers.

NSSGA appreciates the opportunity to provide comments on this very important issue.





NATIONAL STONE, SAND & GRAVEL ASSOCIATION

Natural building blocks for quality of life

U.S. Department of Labor
Mine Safety and Health Administration

NSSGA/MSHA Alliance

Core Principles of a Model Safety Program

The goal of the following outline is to provide the fundamental elements of a safety program that will help create an ideal culture in order to prevent accidents and injuries.

- **Front Line Management Leadership and Commitment**
  - **Supported by Demonstrated Senior Management & CEO/Owner Commitment**
  - **Safety Director Role**

- **Training and Development**

- **Formal Auditing of All Employee Work Practices**

- **Employee Involvement & Participation**
  - **Job Safety Analysis**
  - **Safety Committees**

- **Incident Investigation**

- **Safety Communications**
  - **Alerts**
  - **Newsletters**

- **Regulatory Compliance Programs**

- **Operational Safety Best Practices**

- **Recognition Program**

- **Accountability System**

- **Substance Abuse Prevention Program**

The following pages will outline what each of these principles means and examples of how they can be used to obtain better safety performance at your company.

HEALTH AND SAFETY POLICY

Safety will be given primary importance in planning and operating all company activities in order to protect employees against occupational injuries and illnesses, and in order to protect the company against unnecessary financial burden and reduce efficiency. Accordingly, it is company policy to place safety and health on an equal basis with Quality, Quantity, and Cost of providing service.

All management and supervisory personnel are responsible for providing and maintaining a safe and healthy work environment and for the safe work conduct of all persons reporting or assigned to them.

All employees are responsible for their own safety, that of their fellow employees and the public. They must perform their work in a professional, safe manner and adhere to working practices and rules established for their safety.

This program has been prepared for all employees and is intended to be a reference to job safety in all company operations. It is intended to prevent accidents, which could result in property damage or injury to you, your fellow employees, the public, or our customers. Very simply, this program is a tool to assist and protect you in your work.

Our statement and general policy is:

- To provide adequate control of the health and safety risk arising from our work activities
- To consult with our employees on matters affecting their health and safety
- To provide and maintain safe work areas including plants and mobile equipment
- To insure safe handling and use of hazardous materials
- To provide information, instruction, and supervision for employees
- To ensure that all employees are competent to do their task, and give them adequate training
- To prevent accidents and cases of work related ill health
- To maintain safe and healthy working conditions; and
- To review and revise this policy as necessary at regular intervals

Company Official **Title** **Date**

_____ _____

Miner **Date**

9 ***Front Line Management Leadership and Commitment***
- ***Supported by Demonstrated Senior Management & CEO/Owner Commitment***
- ***Safety Director Role***

Management Leadership is the nucleus for creating a total safety culture. This top-down approach to safety includes being proactive through personal involvement, strategic planning, and excellent management practices. It is a mistake to undervalue the role a manager, especially an owner or CEO can play in setting the tone regarding safety & health.

A clear commitment to safety and health must be established by the most senior official of the company and then communicated to all managers and employees. Sometimes breakdowns in communication or expectations occur within the middle-manager structure of an organization, and as a result safety performance suffers.

In addition, executives must allow employees to be actively involved in the safety process in order to develop empowerment or ownership of the program. Management commitment in combination with employee ownership can lead to an increase in employee morale leading to reductions in both absenteeism and worker's compensation costs, thereby increasing the safety performance, which ultimately can lead to an increase in production. An employee will respond to the expectations set by his/her manager, if safety is not discussed and reviewed routinely, it could be assumed that it is not important.

The role of a safety director is an important one and should be considered even for a small operation. The safety director is really a resource to both management and to the production workforce. That person needs to ensure that employees have the training, tools, and support they need to perform their jobs safely. It is easy to get caught up in the demands of production, a safety director needs to be able to remind all employees that nothing is more important than their safety & health.

What can a manager do to help convince their employees that they are committed to safety?

Visible Involvement & Commitment

Site visits
Interaction with employees (feedback and follow-up)
Follow through with policy (disciplinary issues)
Safety concerns integrated into overall strategic planning
Clear goals and objectives set and communicated
Safety managed in the same manner as production and quality
Clarify roles and responsibilities and establish expectations
Clearly assigned safety responsibilities

Safety Director reports to President/Owner
Establish accountability
Adequate authority given to carry out responsibilities
Set a good example by following all safety & health rules, including use of the proper PPE

9 **Training and Development**

Training is a mechanism used to develop a worker's individual skills and competencies in company policy, regulations, and safe work practices. Safety training is vital in order to have confidence that your employees know and understand how to perform their jobs without putting themselves into hazardous situations or environments.

Not all hazards in our industry can be eliminated, however through training, we can educate our employees to identify potential hazards through effective risk assessment, leading to avoidance and mitigation.

MSHA's §46 regulation is a comprehensive guideline for employee training that must be followed.

Who should receive training?

Executive Management, Operation Managers and Supervisors
Craft Employees
New Miner, with experience and without
Independent Contractors, Subcontractors, and Vendors

9 **Formal Auditing of All Employee Work Practices**

A Company must review on at least an annual basis the effectiveness of its safety program. An annual review will help clarify expectations and make managers and employees accountable for their performance. Equally important are the monthly and quarterly reviews of accidents, trends and observations.

Self-Evaluation Suggestions

1. Record keeping requirements (e.g., MSHA § 50)
2. Industry-best Benchmarks
3. Work-site analysis – safety inspections/mock MSHA inspection
4. Worker Observation
5. Statistical Measurements (trending, incident rates, claims cost, etc.)

9 **Employee Involvement & Participation**
- **Job Safety Analysis/Job Task Analysis**
- **Safety Committees**

The people most exposed to the hazards that exist in our industry may have the solutions to eliminate or mitigate them. Doesn't it make sense to get them involved? *Job Safety Analysis and Safety Committees* are two great ways to do just that. There is tremendous value in allowing your employees to become part of the solution to a safety problem. They will feel part of the process, they will own it, and as a result, they will look for other opportunities to get involved.

A *Job Safety Analysis (JSA) or Job Task Analysis (JTA)* essentially is breaking down a job or task to it's most fundamental components, identifying all potential hazards along the way and devising a procedure to ensure safe completion of the job. All miners must perform a risk analysis of all job tasks before they begin work on a task each and every time they perform a task. If they are uncertain about a condition or work practice they should consult with the manager. MSHA has provided a number of examples on their website (www.MSHA.gov) and even outlines how to perform a JTA. *(Attachment 1)* .

Safety Committees are another effective way to identify hazards and unsafe work practices, and correct them before they result in an accident or injury. A safety committee allows employees to get involved in creating solutions and taking ownership. Often a safety director may facilitate these meetings and having the site manager or company CEO/owner present really demonstrates the commitment to a safe work place.

9 **Incident Investigation**

Following an incident, the most important thing that can be done is to perform an investigation so that the root causes can be identified in order to prevent similar incidents in the future. An incident could be as simple as a "Near Miss" or as tragic as a fatality. The more near misses and minor incidents that can be fully investigated, the better chance you have to avoid a more serious accident or fatality. *(Attachment 2)*.

As part of a thorough investigation, the following should be asked or explored:

Who was involved?
What happened?
Witness statements
What job was being performed?
Tools/equipment being used
Photos/video
Solutions/prevention
In severe incidents, the scene should be secured so that nothing is disturbed

- **Safety Communications**
  - **Alerts**
  - **Newsletters**

Safety Communications, including *Alerts* or *Newsletters*, are a great way to get the message out to your employees. These items can be included with the employee's paycheck so that they are more likely to be read. Safety alerts and newsletter are also great vehicles to recognize employees or operations for their good work, be it safety related or something else. The better informed your workforce is, the better prepared they will be to complete the job safely! *(Attachment(s) 2 & 3).*

- **Regulatory Compliance Programs**

Federal Mine Safety & Health Act of 1977,
Public Law 91-173,
*as amended by Public Law 95-164**

Congress declares that--

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource--the miner;
(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;
(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;
(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;
(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

Management is responsible for the overall health and safety of our employees. However, all employees are responsible to:

- Co-operate with supervisors and management on health and safety issues
- Not interfere with or deactivate anything provided to safeguard their health and safety
- Take responsible care of their own health and safety
- Take responsibility for looking out for coworkers, safe work practices, and
- Report all health and safety concerns to an appropriate manager

Legal Identity- Scope
30 CFR Part 41.10

Section 109(d) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164), requires each operator of a coal or other mine to file with the Secretary of Labor the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names and addresses.

Quarterly Employment Reports
Preparation and submission of MSHA Form 7000-2--Quarterly Employment and Coal Production Report.
30 CFR Part 50.30

(a) Each operator of a mine in which an individual worked during any day of a calendar quarter shall complete a MSHA Form 7000-2 in accordance with the instructions and criteria in §50.30-1 and submit the original to the Denver Safety and Health Technology Center, P.O. Box 25367, Denver Federal Center, Denver, Colo. 80225, within 15 days after the end of each calendar quarter. These forms may be obtained from MSHA Metal and Nonmetal Mine Safety and Health District Offices and from MSHA Coal Mine Health and Safety Subdistrict Offices. Each operator shall retain an operator's copy at the mine office nearest the mine for 5 years after the submission date.

Electricity - Testing grounding systems.
30 CFR Part 56.12028

Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the resistance measured during the most recent tests shall be made available on a request by the Secretary or his duly authorized representative.

Firefighting Equipment - Inspection.
30 CFR Part 56.4201

(a) Firefighting equipment shall be inspected according to the following schedules:
   (1) Fire extinguishers shall be inspected visually at least once a month to determine that they are fully charged and operable.
   (2) At least once every twelve months, maintenance checks shall be made of mechanical parts, the amount and condition of extinguishing agent and expellant, and the condition of the hose, nozzle, and vessel to determine that the fire extinguishers will operate effectively.

(3) Fire extinguishers shall be hydrostatically tested according to Table C-1 or a schedule based on the manufacturer's specifications to determine the integrity of extinguishing agent vessels.

(4) Water pipes, valves, outlets, hydrants, and hoses that are part of the mine's firefighting system shall be visually inspected at least once every three months for damage or deterioration and use-tested at least once every twelve months to determine that they remain functional.

(5) Fire suppression systems shall be inspected at least once every twelve months. An inspection schedule based on the manufacturer's specifications or the equivalent shall be established for individual components of a system and followed to determine that the system remains functional. Surface fire suppression systems are exempt from these inspection requirements if the systems are used solely for the protection of property and no persons would be affected by a fire.

(b) At the completion of each inspection or test required by this standard, the person making the inspection or test shall certify that the inspection or test has been made and the date on which it was made. Certifications of hydrostatic testing shall be retained until the fire extinguisher is retested or permanently removed from service. Other certifications shall be retained for one year.

Table C-1 Hydrostatic Test Intervals for Fire Extinguishers

Extinguisher type	**Test interval (years)**
Soda Acid	5
Cartridge-Operated Water and/or Antifreeze	5
Stored-Pressure Water and/or Antifreeze	5
Wetting Agent	5
Foam	5
AFFF (Aqueous Film Forming Foam)	5
Loaded Stream	5
Dry-Chemical with Stainless Steel Shells	5
Carbon Dioxide	5
Dry-Chemical, Stored Pressure, with Mild Steel Shells, Brazed Brass Shells, Or Aluminum Shells	12
Dry-Chemical, Cartridge or Cylinder Operated, with Mild Steel Shells	12
Bromotrifluoromethane Halon 1301	12
Bromochlorodifluoromethane Halon 1211	12
Dry-Powder, Cartridge or Cylinder-Operated, with Mild Steel Shells[1]	12

[1]Except for stainless steel and steel used for compressed gas cylinders, all other steel shells are defined as "mild steel" shells.

Independent contractor register
30 CFR Part 45.4

(a) Each independent contractor shall provide the production-operator in writing the following information:
  (1) The independent contractor's trade name, business address and business telephone number;
  (2) A description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed;
  (3) The independent contractor's MSHA identification number, if any; and
  (4) The independent contractor's address of record for service of citations, or other documents involving the independent contractor.

(b) Each production-operator shall maintain in writing at the mine the information required by paragraph (a) of this section for each independent contractor at the mine. The production-operator shall make this information available to any authorized representative of the Secretary upon request.

First Aid
30 CFR Part 56.18010

An individual capable of providing first aid shall be available on all shifts. The individual shall be currently trained and have the skills to perform patient assessment and artificial respiration; control bleeding; and treat shock, wounds, burns, and musculoskeletal injuries. First aid training shall be made available to all interested miners.

Hazardous Communications (HazCom)
30 CFR Part 47

- Management will inventory and record hazardous materials
- Management will ensure that a written program is kept up-to-date
- Management will secure MSDS for all materials listed and make them available to all miners at locations that are assessable on any working shift
- Management will provide and insure all hazardous materials containers are labeled for identification
- Management will ensure all miners and contractors receive training with regards to the hazardous materials they may be exposed to while on mine property

- Management will make available a copy of an MSDS sheet to miners and/or contractors

Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines
30 CFR Part 46

Management will ensure that quality training is provided that will comply with the Part 46 Training requirements for all miners, supervisors, and contractors who perform work activities on mine property. (See Part 46 Training Rule for details)

Personal Protective Requirements
30 CFR Parts 56.15001 to 56.15020

- Management will provide all personal protective equipment as indicated by Yes and Employees will provide the items indicated by No
- Employees are responsible for wearing and using personal protective equipment at all times when required

Protective Gear	Required or recommended	*For Whom*	*When*	Supplied by Company			
Safety Shoes	Required	All Workers	All Times	Yes		No	
Safety Glasses	Required	All Workers	All Times				
Hard Hat	Required	All Workers	All Times				
Snug-fitting clothing	Required	All Workers	All Times				
Protective Gloves	Required	All Workers	When needed				
Electrician's gloves	Required	All Workers	When handling electrical cables				
Hearing Protection	Required	All Workers	When noise levels exceed 85 dBA				
Respirators	Required	All Workers	When dust, gas, or fumes exceed allowable limits				

Notification, Investigation, Preservation of Evidence - Immediate notification
30 CFR § 50.10

- Employees are required to report all accidents or illness to management as soon as possible after the occurrence.
- Management will contact MSHA of accidents requiring immediate notification. (See 50.10 this page)
- Management will investigate all accidents and complete accident reports required by this policy and Part 50, CFR.
- Management with the assistance of the employees will, after review of the findings, initiate policies and procedures to prevent recurrence.

Emergency Procedures
30 CFR Part 56

- Management is responsible for providing and maintaining fire protection equipment
- Employees are responsible for checking fire protection in their work areas and equipment and reporting to management when corrective actions are needed.
- The emergency phone number to call for fires is 911.

Safety and Health Audit

Please see the attached safety and health audit for aggregate operators, which is focused on the twenty most cited MSHA standards. These standards account for approximately 84% of the citations issued at aggregate mining operations. *(Attachment 7)*

9 Operational Safety Best Practices

Many times your employees may have developed a safer or more efficient way to do their job, while at the same time other companies or operations struggle to find a better way. Many larger companies routinely encourage their operations to share *Best Practices* as a way of finding the safest and best way to perform a task and to recognize those responsible for thinking outside the box. We are all under the same pressures to produce more, in a shorter time, and at a lower cost – best practices sometimes allow us to meet these pressures SAFELY. *(Attachment 5)*
A recent publication identified the following six best safety and health management practices:

Operational integration – safety is integrated into all facility operations and processes.

Motivational programs – programs are in place to encourage employees to recommend safety improvements and implement them. Companies employ

various types of recognition and rewards in such programs, ranging from management commendation to financial rewards.

Behavioral observation/feedback – a specific program is in place for employees to provide constructive/supportive feedback to co-workers on their safety behavior and opportunities for improvement.

Safety committee – an effective safety committee with broad-based participation has been established and meets regularly to discuss goals/performance/progress on initiatives.

Case management – sites work closely with medical professionals to evaluate occupational injuries and illnesses, to ensure that prompt medical treatment is provided, and to coordinate efforts to return recovering employees to their own jobs or alternative assignments as soon as practicable.

Safety survey – periodic employee surveys or focus group safety discussions are conducted to assess opportunities for improvement and corrective/preventive action to address needs.

Driving Toward "0": Best Practices in Corporate Safety and Health
The Conference Board, 2003

9 **Recognition Program**

Recognition programs should be considered when building a safety program and culture. People like to be recognized for doing things the right way or better than expected, and sometimes either one on one or public recognition means more to an employee than a financial reward.

There are two schools of thought regarding incentives or rewards for working safely. One side might argue that employees should not be paid extra or rewarded for performing their job safely, after all that is what they are expected to do. The other approach is that sometimes an incentive might be needed to get employees more focused on safety or to raise awareness.

Which application is best? It depends on your culture and your corporate philosophy, but the value of recognition should not be undervalued, and sometimes it is as easy as saying "thank you".

Not everyone is motivated in the same way; constant criticism or a negative approach may wear thin after a while. Positive reinforcement and coaching can be better

alternatives and should be tried first, especially with new and inexperienced employees.

9 **Accountability System**

Accountability is a key component in building a safety program, and part of setting clear expectations regarding safety & health, includes consequences for not following the rules. Safety rules, policies, and procedures must be clearly communicated to all employees and expectations must be set for each level of management, as well as the production employees.

When a rule is ignored or violated, it must be addressed in a serious fashion, it cannot be ignored. If ignored, it sends the message to the employee that it's ok to violate rules as long as there was not an accident or injury. It is too late to discipline following an incident. This is precisely the reason why it is important not only to discipline, but also to reinforce positive behavior and safe acts. Employees must understand and believe that accidents and injuries are unacceptable, and the old cliché of "xxxx happens" does not have a place within your culture.

When issuing discipline, often a progressive program is best:

Verbal warning
Written warning
Time off without pay
Termination

If the violation is serious enough, you may want to consider termination immediately. Again, many factors play into discipline, including your culture and philosophy, union issues, etc.

9 **Substance Abuse Prevention Program**

A healthy workforce is a safe one; employees under the influence of drugs or alcohol are not safe and could injure themselves or others around them. *Substance Abuse* testing should be considered; most corporate programs include the following:

Pre-employment
Random
Post Accident
Reasonable Suspicion

Some states do not allow random testing, although most experts agree, that random testing is the most effective means of detecting problems.

So what happens when an employee tests positive for drugs and/or alcohol? There are two options, immediate dismissal or second chance based on mandatory counseling and future testing. Most companies that have substance abuse testing programs do not allow anything more than a second chance. If you decide that a second chance opportunity will be offered for employees, then an employee assistance program (EAP) should be considered. *(Attachment 6)*

EAP's usually offer not only counseling for substance abuse, but many times, help employees deal with other issues that could preoccupy a person to the point that they are not able to concentrate on their jobs, for instance: marital problems or issues with a child or parent.

In our industry, a mental lapse can be deadly, and again, a healthy employee is a safe employee – mind and body.

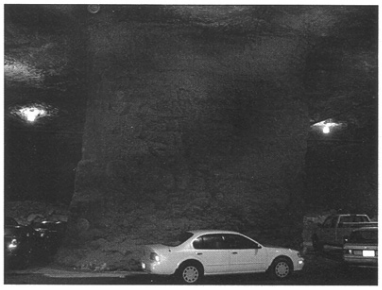
NATIONAL STONE, SAND & GRAVEL ASSOCIATION

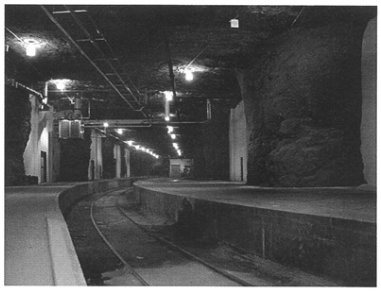
Natural building blocks for quality of life

NATIONAL STONE, SAND & GRAVEL ASSOCIATION FACT SHEET

How Underground Aggregates (Stone) Mines Differ from Other Underground Mines

- Mined product is non-combustible, non-flammable.
- No flammable gases such as methane present; MSHA approved ("permissible") equipment not required in stone mines such that regular automobiles, trucks and loaders can be used.
- Mining methods create large open spaces for access by large equipment; large openings accommodate emergency equipment used by non-mine emergency services.
- More stable mineral formations resulting in stable mine roofs; minimized need for additional roof supports.
- Emergency escape and access easier because of large spaces in mine.
- Most are only a few hundred feet deep; horizontal tunnel access permits large mobile equipment to easily enter mine.
- During an emergency, more equipment choices available to mine operators because reduced hazard permits use of "unapproved" equipment.
- Minimal need for certified mine rescue teams because local fire departments or emergency services are able to respond.
- Due to size of large open spaces and mining methods, mechanical mine ventilation usually not required or is minimal; natural ventilation works well.





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NSSGA Safety Pledge for Member Companies

As an aggregate producer, our company is committed to a culture that promotes our employees as our most valuable resource.

We believe that safety and health are important values. Our goal is to work with our miners to ensure they know how to prevent injuries and exposure to harmful substances in order to return home safely at the end of every shift.

To accomplish this, we will improve employee safety and health practices, ensure the amount and quality of formal employee training is appropriate, and enhance employee participation in the safety and health process.

We will continually enhance management's direct participation and commitment in all aspects of safety and health, specifically that of senior management, production and plant managers, field superintendents and supervisors.

By voluntarily signing this agreement, we demonstrate our commitment to a work environment designed to eliminate injury incidents, which will ultimately result in zero fatalities. Our first milestone in this process will be to reduce the MSHA injury incident rate 50 percent by the end of 2007, with continuous improvement thereafter.

Name_____

Company_____

NATIONAL STONE, SAND & GRAVEL ASSOCIATION

NATURAL BUILDING BLOCKS FOR QUALITY OF LIFE.

Prepared Statement of Mike Neason, Administrator, Mining Practice Specialty of the American Society of Safety Engineers

My name is Mike Neason, and I am a fifth generation miner and a Certified Mine Safety Professional. I manage safety and health for the mining operations of Hanson Aggregates in Kentucky and surrounding states—both surface and underground mining. I come before you today in my role as Administrator of the Mining Practice Specialty of the American Society of Safety Engineers (ASSE). ASSE represents more than 30,000 safety, health and environmental (SH+E) professionals dedicated to seeing that every worker has the best possible opportunity to go home healthy and safe from their jobs each day. The Society is the largest professional safety organization and, founded in 1911, has been in existence the longest.

ASSE's Mining Practice Specialty—one of thirteen ASSE practice specialties covering the spectrum of safety and health professional interests—currently has more than 350 members. My colleague members are men and women on the front lines of managing mine safety and health in coal and metal/nonmetal mines, surface and underground, or providing training, auditing and consultation services to the mining industry.

We commend the Committee for looking critically at mine safety and health issues today, both in terms of what can be done to prevent another disaster such as the Sago mine catastrophe two months ago and also to discern what can be done to improve the efficiency and effectiveness of the Mine Safety and Health Administration (MSHA). ASSE shares your concern. We have established a task force to review mining emergency preparedness and communications in response to the recent tragedies. Through ASSE's alliance with MSHA as well as our partnership with the National Institute of Occupational Safety and Health (NIOSH), we intend to help encourage an effective, proactive federal response to the concern many share over this nation's commitment to mine safety and health.

For today's purposes, ASSE reviewed the two pending Mine Act reform measures, S. 2231, introduced by Senator Robert Byrd on February 1, 2006, and S. 2308, introduced by Senator Arlen Specter on February 16, 2006. Our comments here are initial reactions largely to the ideas contained in these bills. Following the work of ASSE's task force examining these same issues, ASSE will be able to provide the Committee with a more elaborate response, which we look forward to doing.

As a preliminary matter, it is important to recognize that, while the loss of life in the Sago disaster was unacceptable to mine safety and health professionals dedicated to doing everything we can to make mines safe and healthy places to work, it is far from indicative of the overall state of mine safety and health in the United States. To the contrary, mine safety has drastically improved over recent decades, and last year marked the lowest number of fatalities in U.S. history, capping a general trend of declining fatalities, injuries and illnesses. The successes should not be overlooked based on this failure.

These strides were achieved, first, through tough and effective enforcement of this nation's mining laws. It should not be overlooked, however, that efforts of government, state and private sector initiatives, often working in cooperation, also played a necessary role. Because of the commitment from each of these sectors, technology is getting better and better at engineering hazards out of mining and removing miners from exposure to hazards. We are now seeing greater computerization of mining methods having a substantial impact on our ability to manage the safety and health risks within mines, with a substantial promise that even better protections can be achieved.

Duplicating Responsibility for Technology Advancement

Many of the technological advances we already have in place were developed through the efforts of dedicated researchers at the National Institute for Occupational Safety and Health (NIOSH), which houses the former Bureau of Mines. As we indicated in a recent letter to you and Senator Kennedy, ASSE was extremely disappointed that a NIOSH representative was not permitted by his agency—the Department of Health and Human Services—to participate in last month's roundtable on mine safety technology. NIOSH's Mine Program is already positioned to conduct effective intramural research, and, by expanding its already proactive outreach to academia and private sector resources, to support extramural research and develop pilot programs that can test the viability of new mine safety technology in real-world situations.

With all due respect to Senator Byrd and his fully understandable effort to examine new approaches for protecting miners—especially since the unacceptable price of Sago tragedy is being paid by citizens of his own state—ASSE cannot support legislative proposals, as included in S. 2231, that would create an Office of Technology within MSHA or in any other way diffuse this nation's already limited mining safety and health research. Any duplication of NIOSH's technology transfer and research infrastructure would only spread resources thin and most likely add a needless layer of bureaucracy that would delay the development and implementation of new measures to protect miners.

Significantly, Congress originally tasked NIOSH with performing the research to inform MSHA regulatory decisions in the 1977 Mine Act, in which Section 501 directs NIOSH to "conduct such studies, research, experiments, and demonstrations" necessary, among other things

(T)o improve working conditions and practices in coal or other mines * * * to prevent accidents and occupational diseases originating in the coal or other mining industry * * * to develop new or improved methods of recovering persons in coal or

other mines after an accident * * * and to develop new or improved means and methods of communication from the surface to the underground area of a coal or other mine.

The same legislation created MSHA, and the rationale for assigning these responsibilities to NIOSH rather than MSHA was to keep research independent and distinct from regulatory and enforcement influences. The reason to for keeping these functions separate still exists. ASSE could not support creation of a duplicative effort within MSHA. MSHA should have every resource necessary to focus on enforcement and reaching out, not only to NIOSH, but the private sector as well to help ensure that its methods and the expertise of its staff keeps current with technological advances and incorporates ongoing change into its culture. A new commitment to outreach, not a new department, is not needed for that to occur.

If any change is needed, it is the current Administration's commitment to NIOSH. For Fiscal Year 2007, $5 million has been proposed to be taken from NIOSH, this after many of its essential capabilities were taken away in the name of Centers for Disease Control and Prevention reorganization. We urge the Senate to reject this reduction in commitment and increase NIOSH's resources so that NIOSH can better fulfill its mandate to conduct mine safety and health research, develop technology and provide training support materials.

Mine Safety Technology

With respect to mine safety technology, the Sago disaster has pointed out that gaps exist in protections for underground miners—both coal and metal/nonmetal. Although many mines, such as the ones that I oversee, go beyond compliance with MSHA's mandatory standards, others unfortunately adhere to the bare minimum standards, with the result that lives may be lost due to inadequate respiratory protection and technologically obsolete communication systems.

As indicated at the February 15 Subcommittee on Employment and Workplace Safety hearing, the market makes readily available products that function in the same manner as the one-hour Self-Contained Self-Rescuers (SCSRs) but provide expanded protection from toxic gases that can be created in mine fires or present in gassy mines even without an accident. Promising technologies also exist for locating or communicating with miners underground, such as the text messaging technology currently being tested in approximately 140 mines throughout the world. We agree that redundant communications systems that can demonstrate effectiveness make a great deal of sense.

However, when considering what is and may not be feasible, focus must be placed on post-incident functionality when electrical systems may not be working. We urge both NIOSH and MSHA to investigate this issue thoroughly and to explore the utility of technologies developed by the U.S. Department of Defense, the National Aeronautics and Space Agency, and the fire service industries post-911 for communication with firefighters in emergencies. Although we understand that there may be real promise in current communication advances, the transfer of such technology to the underground mining industry is very much in question. Neither Congress nor MSHA should rush to force solutions by assuming the viability of these products before in-mine tests and research can be conducted and such products become commercially available. At this point in time, there simply is no one-size-fits-all solution to underground mine communication, respiratory protection, or mine rescue, as much as we all would wish it.

Although, as Senator Specter suggests, some mines might easily adopt oxygen stations that provide a four-day supply of clean air for all mines in each working area of a mine, this might not be readily accomplished in some smaller mines such as those in the anthracite sector, or those with low passageways. There may, in the alternative, be other ways of achieving the goal more feasibly in such mines. Until the information is available, such regulations should not be congressionally mandated. While the Mine Act has historically been considered a "technology forcing" statute, there are realistic limits as to what can be achieved. To be truly effective, any action meant to improve safety—whether mines or any workplace—through technology must fully consider whether appropriate "off the shelf" technology is readily available before mandates are put in place.

Incentives for Technology

Congress must also be aware that, in the metal/nonmetal sector, approximately 98 percent of underground mines are classified as "small business entities" under U.S. Small Business Administration criteria. Many coal mines especially are small business enterprises with as few as five employees.

ASSE hopes the Committee will consider this reality and look for creative solutions, such as establishing new tax incentives, giving operators some credit against

citation penalties to encourage them to adopt new technology quickly, or making establishing small business loans for the purchase of mine rescue, communications and personal protective equipment. Such measures should help expedite the necessary protection of miners without unnecessarily diminishing the economic viability of these mining businesses, many of which are located in economically deprived areas of our nation.

Effective Penalties

Both legislative proposals offered by Senators Specter and Byrd would increase significantly penalties for violations of MSHA standards. ASSE fully supports strong enforcement and the role meaningful penalties can play in focusing an employer's attention toward safety and health of its workers.

From the popular reaction to the Sago tragedy, it is apparent that many outside the mining industry may not be aware that MSHA already has more enforcement power than any other federal agency, including: mandatory quarterly inspections of all underground mines; warrantless search authority and automatic right of entry under Section 103(a) of the Mine Act; strict liability enforcement powers; mandatory civil penalties for all citations; and civil penalties that have been increased from $10,000 to $60,000 in the past decade. Under Section 110(c) of the Mine Act, individual agents of management can be personally fined up to $60,000 for actions or omissions that constitute aggravated conduct—a power lacking in the Occupational Safety and Health Act covering every other industry. Moreover, the current Mine Act has felony criminal enforcement provisions of up to five years of incarceration, and, unlike OSHA, no injuries need occur for MSHA to recommend criminal prosecution by the U.S. Department of Justice.

However much we would like to think that increases in maximum penalties may be appropriate, in the day-to-day reality of the mining industry that I work in, the heightened penalty levels of $500,000 for high negligence violations (compared with OSHA's $70,000 maximum), the $10,000 minimum penalty for "serious" violations—especially when compared with OSHA's maximum of $7,000 for similar violations—and the other enhanced penalties and "user fees" suggested in S. 2308 and S. 2231 could very well put the average, well-meaning mine out of business with a single penalty.

Moreover, as drafted, the legislation offering these increases is often ambiguous. For example, "habitual violators" would be subject to a minimum penalty of $20,000 for "significant and substantial" citations. However, the legislation does not define "habitual" and includes no statute of limitations after which a repeated violation would no longer trigger this mandatory minimum. Because MSHA does not "group" violations into a single citation as OSHA commonly does, it is not unusual for a mine to have multiple guarding or equipment violations in a single inspection. If each individual citation were assessed at $20,000 because these triggered the "habitual" provision, most mines could not withstand the penalty burden and continue to operate. This area must be more critically explored before any new categories of penalties are created.

Unintended Consequences

We also want to caution the Committee that some provisions of the proposed bills, though well intended, should be reconsidered following this hearing to ensure that unintended consequences do not result in everyone's understandable eagerness to prevent another Sago from occurring.

For example, provisions that would deny the Federal Mine Safety and Health Review Commission (FMSHRC) authority to modify penalties, or requiring abatement action on all citations within 24 hours—have critical due process implications that cannot be overlooked by this Committee if it is to move forward an effective program of reform.

It also appears that, while the technology provisions of the proposed legislation largely concentrate on underground coal mines, the penalty provisions would cover all categories of mines, including surface aggregate operations that do not involve the same level of hazards as do underground operations. Such action appears unwarranted at this time. In particular, Section 7 of Sen. Byrd's bill incorporates the definition of "coal mine" from the 1977 Act, which expands coverage to surface and underground metal/nonmetal mines and to all independent contractors performing any work at any mine, surface or underground Congress' intent with respect to the proposed Senate legislation must be more clearly articulated to prevent inadvertent expansion of the provisions to those outside the underground coal mining sector.

Other suggested provisions, such as a $100,000 minimum fine for failure to notify MSHA of an accident within fifteen minutes, are simply unachievable and may result in unintended consequences in individual situations. In many cases, especially

in small mines with few workers, those who would make the call to MSHA must also be involved in immediate rescue activities longer than this time period would allow. Current provisions state "immediately," which the FMSHRC has interpreted this to mean "two hours or less." Moreover, there are eleven categories of accidents where this fifteen-minute notification requirement would apply, as set forth in 30 CFR 50.2(h), so it could very well not be apparent within fifteen minutes that an incident such as a mine fire or a non-fatal injury falls into the immediately-reportable category. Clearly, we all like the response to mine tragedies to be immediate, but fifteen minutes is probably less than can be mandated effectively, especially given the enormity of fine for failure without regard to the impact of the accident. We urge the Committee to work with MSHA, NIOSH and stakeholders to reexamine this provision in order to determine a more meaningful way to ensure emergency response.

With regard to mine rescue teams, Sen. Byrd's legislation would direct all coal mines to have rescue teams consisting of their own employees. If this is to be achieved, the consequences of either closed mines or a market for coal that bears this cost must be understood. Many small mines have too few workers to field a team. This is why MSHA has for many years permitted mines to join together to form area rescue teams of highly trained personnel. This practice has been demonstrated to work effectively over many years and can remain as an effective option.

Conclusion

ASSE commends the Committee for its consideration of these various issues as well as Senators Specter and Byrd for their efforts in defining specific solutions to issues with which we all struggle. This leadership is needed if we are to move forward and help prevent another Sago tragedy. However, we urge the Committee not simply to assume a lack of MSHA enforcement powers or too weak penalties are the root cause of the failures we have seen. Along with an examination of penalties and more stringent requirements, the Committee must consider other factors that may not be readily apparent.

It could be that the most effective solution is that MSHA make better, smarter use of its current powers and target enforcement resources more directly at the proven "bad actors" rather than being required to inspect all mines in exactly the same way, regardless of their compliance history or safety and health performance. It may be appropriate, if the Mine Act is reopened, to provide the agency with more flexibility in terms of these mandatory inspections so it can deploy its inspectors where they are most needed. More effective and not merely more severe enforcement may very well be the answer we all seek. Again, we urge the Committee to work with MSHA, NIOSH and stakeholders, both within industry and organizations like ASSE to help make these determinations. .

ASSE thanks the Committee for including us in your deliberations. We stand prepared to provide further technical assistance through our Mining Practice Specialty as the Committee continues to explore these critical mine safety and health issues. We also pledge our support in working with MSHA and NIOSH as they look for new methodologies to protect miners and to improve existing standards, programs and outreach efforts.