

**STATEMENT OF RICHARD E. STICKLER
ASSISTANT SECRETARY OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, EDUCATION,
AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Obey, Ranking Member Walsh, and the Members of the Subcommittee, I am pleased to appear before you today to discuss the actions the Mine Safety and Health Administration (MSHA) is taking to protect the health and safety of our nation's miners. I would also like to provide you a report on the significant progress MSHA is making in implementing the Mine Improvement and New Emergency Response (MINER) Act of 2006.

I have been involved in the coal mining industry for more than 40 years. I know firsthand that every fatality is devastating for miners, their families, and the communities they live in. Let me be very clear that my number one priority is to protect the health and safety of America's miners. Both President Bush and Secretary Chao share my strong commitment to the safety and health of all miners.

Although fatalities in the mining industry declined by 35 percent from FY 2000 to FY 2005, to the lowest levels since 1910, MSHA remains short of its goal of zero fatalities, zero injuries, and an end to occupational illness in the mining industry. 2006 was a deadly year in mining. The nation witnessed the tragedies at the Sago Mine and Alma Mine No. 1 in West Virginia and the Darby Mine No. 1 in Kentucky – accidents which claimed the lives of 19 miners. MSHA takes seriously its responsibility to respond to every such incident, and conduct thorough accident investigations and identify the root causes to prevent similar occurrences. Everything we do at MSHA is in service of the goal of zero fatalities in the nation's mines.

The MSHA FY 2008 Budget Request

The President's FY 2008 Budget requests \$313.5 million and 2,306 full-time equivalent (FTE) employees for MSHA—increases of 4 percent and 8 percent respectively over the FY 2007 appropriation. This budget request underscores the Administration's commitment to strong enforcement of safety and health in our nation's approximately 14,000 mines. The budget allocates \$16.6 million to retain 170 additional coal enforcement personnel that were added beginning in 2006, in response to the Sago, Alma, and Darby mine accidents. It also supports the vigorous implementation of new safety standards and regulations authorized in the MINER Act, which the President signed into law on June 15, 2006. Prior to the passage of the MINER Act, MSHA issued an emergency temporary standard on March 9, 2006, addressing many of the safety provisions that were ultimately included in the MINER Act, such as increasing the number of Self-Contained Self-Rescuers (SCSRs) in underground coal mines, additional safety training for underground coal miners, and immediate notification of mine accidents applicable to all mines.

In 2006, MSHA also took significant enforcement actions in both coal and metal/non-metal mines that improved safety. For example, last year MSHA issued 77,129 citations and orders in coal mines, up from 69,124 in 2005, and 62,937 in metal/non-metal mines, up from 59,101. Proposed assessments in 2006 totaled \$35 million, up from \$25 million in 2005.

Implementing the MINER Act of 2006 and Initiating New Policies

As I mentioned before, last year, the President signed the MINER Act - the most significant mine safety legislation in nearly 30 years. The provisions of the MINER Act that have been implemented by MSHA include, among others:

- The filing of emergency response plans by underground coal mine operators;
- Requiring more self-contained self-rescue devices for each miner in every underground coal mine;
- Requiring flame resistant life lines for evacuation in all underground coal mines;
- Mandating additional mine evacuation safety training and training on the use of SCSRs;
- Implemented a maximum civil penalty up to \$220,000 for flagrant violations, and new minimum penalties for “unwarrantable failure” and “immediate notification” violations.
- Requiring all mine operators to notify MSHA immediately after an accident;
- Installing redundant underground to surface communications systems;
- Requiring a supply of breathable air to miners who are trapped in underground coal mines; and
- Training 14 MSHA officials to be Family Liaisons.

Keeping miners safe remains MSHA’s top priority. Implementation of the MINER Act is critical in achieving this goal, and I am proud of MSHA’s work in this regard. I want to review with the Committee the details about the objectives MSHA has already met.

Emergency Mine Evacuation

On December 8, 2006, the Department of Labor published its final rule on Emergency Mine Evacuation in the *Federal Register*. The final rule helps ensure that miners, mine operators, and MSHA will be able to respond quickly and effectively in the event of an emergency. The rule includes requirements for mine operators to provide increased capability for mine emergency response and evacuation and covers additional SCSRs and their storage; training and drills; lifelines, tethers, and multi-gas detectors; and accident notification. This regulation implements many provisions that were included in the MINER Act to enhance miner safety, including:

- Increased numbers and storage of SCSRs;
- Improved mine emergency evacuation drills and training;
- Installation and maintenance of directional lifelines in underground coal mines which must be fire resistant within three years;
- Immediate accident notification for all mines.

In addition, MSHA required operators to provide multigas detectors to miners working alone and to each group of miners. While this provision was not part of the MINER Act, MSHA believed it to be important and included it in its final emergency mine evacuation standard.

This rule was effective immediately, on December 8, 2006, with the exception of some training and equipment provisions that must wait for training units to be developed and made available and for the equipment to be manufactured and shipped to some of the mine operators.

With regard to the caches of SCSRs operators are required to store throughout the mines, MSHA has requested manufacturers of these units to give priority consideration to fulfilling orders for mining operations starting with those that do not already have at least two SCSRs per miner.

I have also written letters to underground mine operators asking them to ensure that they have at least two SCSRs per miner at their mine. If they do not, I have asked them to contact the manufacturer of their SCSRs to request priority order consideration. In addition, I have asked operators to let their local MSHA District Manager know if they need priority order consideration so that MSHA can monitor the requests and assist wherever possible.

We are following a risk-based implementation plan to ensure sufficient quantities of SCSRs for every underground mine operation in this country, and we will continue to closely monitor the situation.

Emergency Response Plans

Section 2 of the MINER Act requires underground coal mine operators to adopt emergency response plans covering the evacuation of all individuals endangered by an emergency, and to provide for the maintenance of individuals trapped underground. Of course, the first priority in any mine accident is to evacuate everyone from the mine, to the greatest extent possible. In addition, the emergency response plans must address post-accident communications and tracking, post-accident breathable air, lifelines, training, and local coordination.

MSHA issued Program Policy Letters providing guidance to mine operators to help them develop their emergency response plans. All plans were submitted to MSHA by the deadline of August 14, 2006. We are ensuring that the plans are reviewed in a timely manner, approved, and implemented for all underground coal mines as specified in the Act. Of the 481 plans that have been submitted for approval, approximately 90% have been partially approved. Breathable air submissions are just now due. MSHA is reviewing and discussing plan submissions with operators.

Post-Accident Breathable Air

With respect to post-accident breathable air, MSHA issued a Program Information Bulletin (PIB) on February 8, 2007, to provide guidance to mine operators concerning acceptable quantities and delivery methods in underground coal mines. This PIB was placed on MSHA's website and was distributed widely to the coal mining community.

The major provisions of this PIB provide guidance to mine operators to:

- Establish boreholes within 2,000 feet of the working section; or
- Provide forty-eight hours of breathable air located within 2,000 feet of the working section of the mine with contingency arrangements to drill boreholes if miners are not rescued within 48 hours; or
- Provide ninety-six hours of breathable air located within 2,000 feet of the working section; or
- Provide other options that provide equivalent protection based on unique conditions at a mine.

Methods of providing breathable air (in barricaded or other areas that isolate miners from contaminated air) include:

- Drilling boreholes;
- Air line supplied by surface positive pressure blowers; or
- Compressed air cylinders, oxygen cylinders, or chemical oxygen generators.

We are also posting related compliance assistance materials on MSHA's website, including the full text of the PIB, a hazard awareness information sheet on use of compressed air and compressed oxygen; and information sheets on methods of providing breathable air, including calculations.

Post-Accident Communications and Post-Accident Tracking

Section 2 of the MINER Act requires that each mine evacuation plan provide a redundant means of communications with the surface for persons underground. It also requires that the plan provide a means of tracking the pre-accident location of all underground miners. Furthermore, the MINER Act requires that mine operators adopt wireless communications and electronic tracking systems by June 2009.

To comply with the immediate requirements of Section 2, MSHA has observed the testing or demonstration of 19 post-accident communications and tracking systems at various mine sites around the country. When these systems are presented to MSHA for approval, we expedite the approval process to ensure that safe, durable and reliable systems get into the mines as quickly as possible. So far, MSHA has approved a total of 12 systems, including three new devices. These new devices are:

- The Kenwood portable hand held radio
- Marco RFID (radio frequency identification) Tracking Tag
- Matrix Design Group RFID Tracking Tag

While none of these devices are wireless, they do provide safe options for communicating in mines.

In order to meet the long range communications and tracking requirements of the MINER Act, MSHA is reviewing all the available technology and working with the National Institute for Occupational Safety and Health (NIOSH) and manufacturers to help in the development of safe, reliable systems for underground coal mines. MSHA's primary responsibility is to ensure these devices are safe to use in the highly combustible mining environment that may exist, while NIOSH is responsible for researching and developing these devices. We have had contact with more than 125 parties about systems to track and/or communicate with miners while they are underground.

Mine Rescue Teams

The MINER Act requires the Secretary of Labor to issue regulations with regard to mine rescue teams by December 2007. These regulations must address improved training, certification, availability, and composition requirements for underground coal mine rescue teams. MSHA is currently drafting a proposed rule to implement the MINER Act provisions for mine rescue teams.

Civil Penalties

Upon passage of the MINER Act, MSHA promptly implemented provisions mandating a new maximum penalty of up to \$220,000 for flagrant violations, and new minimum penalties for "unwarrantable failure" and "immediate notification" violations in accordance with the MINER Act. The penalty amounts currently being assessed include:

- Failure to promptly notify MSHA of accidents - \$5,000 to \$60,000
- Unwarrantable failure violations – minimum \$2,000 for the first citation or order, and \$4,000 for subsequent orders
- Flagrant violations – up to \$220,000

Last October, I issued a Procedure Instruction Letter (PIL) to all MSHA inspectors establishing uniform, Agency-wide procedures for enforcement personnel to properly evaluate flagrant violations as defined in the MINER Act. Since the issuance of this PIL, MSHA's Coal Mine Safety and Health division is considering about a dozen flagrant citations and orders, the first ever of their kind.

MSHA included the MINER Act penalty provisions and increased civil penalties for other violations in our civil penalty proposed rule, published September 8, 2006. We held public hearings to receive input from miners, the mining industry, and other interested parties.

After reviewing the testimony from the public hearings and written comments from all interested parties, we drafted a final rule and submitted it to the Office of Management and Budget for their review in accordance with required regulatory procedures. We anticipate publication of the final rule on civil penalties in the *Federal Register* soon.

Family Liaison Program

MSHA's Family Liaison Policy has been put into place to provide for an MSHA liaison to be with families at the site of a mine accident with multiple fatalities. A Program Policy Letter has been issued and 14 designated family liaison personnel have completed their initial training sessions. The National Transportation Safety Board and the American Red Cross have helped train these individuals.

Sealing of Abandoned Areas in Underground Coal Mines

The MINER Act requires MSHA to issue mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines. The MINER Act requires the health and safety standards to "...provide for an increase in the 20 psi standard currently set forth in section 75.335(a)(2) of title 30, Code of Federal Regulations." MSHA has 18 months from the enactment of the MINER Act to issue these new regulations. I believe this issue may be the most complex faced by MSHA and the mining industry in the last 20 years and is one that requires careful consideration.

NIOSH has issued and requested comment on a draft report on Explosion Pressure Design Criteria for New Seals. After those public comments are received and evaluated by NIOSH, we expect that NIOSH will issue a final report. MSHA will use all available information, including that in the NIOSH report, to draft a proposed rule on seals. We are working with NIOSH in the development of the proposed rule.

As an interim step, last year MSHA established a moratorium on the future use of alternative seals and raised the psi standard for existing alternative seals from 20 to 50 psi.

Technical Study Panel on Belt Air

Section 11 of the MINER Act required MSHA to establish a Technical Study Panel on Belt Air. The purpose of this Panel is to "provide independent scientific and engineering review and recommendations with respect to the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining." Congress provided the Panel one year from the Panel's appointment to issue its report, and the Secretary of Labor is given an additional 6 months to respond to the Panel's report.

The charter governing the Panel was published in the *Federal Register* on December 22, 2006. The first meeting of the Technical Study Panel took place January 9-10, 2007. Members of the Panel are prominent and experienced mine safety and health professionals. As mandated in the MINER Act, two of the Panel members were appointed by the Department of Health and Human Services, two by the Department of Labor, and two members were appointed by Congress. The Panel will convene its second meeting on March 28, 29 and 30 in Pittsburgh, Pennsylvania.

Refuge Alternatives

NIOSH will conduct research and field tests on refuge alternatives. By the end of this year, NIOSH is scheduled to report the results of the research to the Department of Labor. By mid-2008, in compliance with the MINER Act's deadline, the Department of Labor will report to Congress on the actions MSHA will take in response to the NIOSH report. MSHA is aware of requirements by states for refuge alternatives and will evaluate their use in conjunction with MSHA's breathable air requirements.

Recruitment

The Emergency Supplemental Appropriations Act of 2006 (P.L.109-234) provided an additional \$25.6 million for MSHA to strengthen its coal enforcement program, including the hiring of coal mine inspectors and other enforcement personnel. MSHA is pressing ahead with recruitment, training and deployment of the additional 170 coal mine enforcement personnel funded by the emergency supplemental appropriation. To date, 100 of the 170 staff have been hired. While MSHA faces significant challenges to both replace the enforcement personnel who will likely retire this year and expand our enforcement ranks, I believe that the agency will meet its goal of hiring 170 net new personnel. Once these personnel are on board, MSHA will have more coal enforcement personnel than the agency has had in more than a decade. The President's FY 2008 budget request includes \$16.6 million to maintain these enforcement staff.

We continue to conduct recruitment drives in local communities around the country, and we have hired additional staff at our Mine Health and Safety Academy to ensure that we can properly and expeditiously train our new inspectors and get them out to the job sites where they will make a difference. I believe this training is the best, most effective program MSHA has ever had and will enable these new inspectors to meet today's challenges. In the end, I strongly believe the increased presence of MSHA enforcement staff at the job sites will have a positive impact on mine safety and health.

Current Enforcement Activities

This past February, MSHA initiated special emphasis inspection programs in Coal Districts 4 and 6 to examine roof controls in mines that use retreat mining methods. Although the District 6 program is still ongoing, in District 4 MSHA issued 234 citations and orders during a two-week period.

Moving forward, I will have MSHA use all of the tools available to achieve our goals, including tough enforcement, education and training, and technology. MSHA will be particularly aggressive with those mine operators who habitually violate MSHA standards and who also seem to view penalties as just another cost of doing business. In order to better identify these persistent repeat violators, MSHA is developing a database to provide for a more objective analysis of accident trends and enforcement results. MSHA will use the data developed from this database to target those operators who willfully refuse to follow the laws and regulations governing mine safety and health.

One particular tool, pattern of violations, is a tool that has been in MSHA's arsenal for over 30 years but has never been used. I intend to use the new database to apply objective criteria to those who refuse to obey mine safety laws and put them on a pattern of violations if they meet the statutory criteria. This tool allows MSHA to close those sections of a mine where significant and substantial violations occur, and termination of the pattern notice may be difficult for a mine to achieve. This measure is tough, but I believe it is also necessary in instances where the safety of miners is routinely jeopardized.

MSHA will also continue to do focused inspections on known hazards, such as the program we recently completed on retreat mining. Implementation of the MINER Act will not prevent MSHA from meeting its statutory goal of inspecting each underground mine four times annually and each surface mine twice a year.

Conclusion

Much progress has been made since passage of the Federal Mine Safety and Health Act of 1977. We now face the challenge of continually improving upon the safety and health progress achieved in the past 30 years in an industry that has played, and will continue to play, a key role in America's economic growth. Today, every single person at MSHA remains focused on our core mission: to improve the safety and health of America's miners and to work toward the day when every miner goes home safe and healthy to family and friends, after every shift of every day.

Thank you for allowing me to testify today. I look forward to answering your questions.