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COAL MINE HEALTH AND SAFETY IN THE UNITED STATES

Madam Chairman and members of this Subcommittee on Employment and Workplace Safety, I would like to thank you on behalf of all the members of the United Mine Workers of America (UMWA or Union) for holding this very important hearing. We are eager to share the UMWA's perspective regarding what has – and has not – occurred concerning coal mine health and safety since the MINER act passed some two years ago. We appreciate your interest in protecting the nation's miners and their families. We are also pleased that you appreciate the need for continued oversight of the federal agencies charged with the responsibility to protect the health and safety of all miners.

It is said that "Every coal mine health and safety law in this country is written in coal miners' blood." Despite the existing laws governing miners' health and safety, miners continue to die at alarming rates. Already this year, we have lost ***14*** coal miners. This is far too many. We need to further improve our laws and regulations so that no miner will be killed just because he goes to work at a coal operation.

It took the Jim Walters Resources disaster of September 2001, and the Sago, Aracoma and Darby disasters of 2006 to achieve the post-accident improvements contained in the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). We hope that Congress will appreciate that lessons learned from the Crandall Canyon disaster demonstrate that it is imperative to enact further legislation to protect miners, such as the pending S-MINER Act.

We must learn from tragedies and near misses alike. We should take corrective action. However, as two recent investigative reports demonstrate, MSHA is not doing a good enough job protecting miners. The U.S. Senate Committee on Health, Education, Labor and Pensions (HELP) Report and the Department of Labor's (DOL) Office of Inspector General's (OIG) Report regarding MSHA's actions and inactions at the Crandall Canyon mine last August both show internal problems at the Agency. I commend Senator Kennedy and the entire HELP Committee and the DOL's OIG on their Reports and would like to make both Reports a part of this record. From these reports it is evident that MSHA is incapable of policing itself.

When Congress passed the MINER Act, it constituted the first federal mining law enacted in almost 30 years. While it offers miners a better chance of surviving and escaping a fire, explosion, innundation or mine entrapment, in order for it to be most useful to miners it must be effectively codified in regulations by MSHA. As investigators outside of MSHA have discovered, MSHA continues to make dire mistakes, at the expense of miners' safety.

Crandall Canyon Mine Disaster
Report Released by Health, Education, Labor and Pensions Committee
Edward M. Kennedy, Chairman

First, let me thank Chairman Kennedy on the record for the recent Report issued by the Health, Education, Labor and Pensions Committee regarding the Crandall Canyon mine disaster. That Report is insightful and factual.

It shows the extent to which some operators violate and ignore health and safety laws. The Report indicates that the operator at Crandall Canyon overlooked the needs of miners and coerced the federal Mine Safety and Health Administration into abdicating its responsibility to protect those workers. Indeed, it demonstrates that this operator systematically used its influence when it could to maximize profit.

As the Report illustrates, that operator made multiple attacks on a system designed in many cases to be slow and methodical. The disaster was partly attributable to the operator's deliberate intimidation of MSHA inspectors and supervisors, but also to a misguided desire on the part of some agents of MSHA to appease the operator by reducing enforcement in return for favors. The Company strategically challenged most citations, thereby overwhelming an already overtaxed program. Further, Bob Murray's words and tactics, and those of his surrogates,

were well known and documented by the Agency and by the industry: his established way of doing business is to intimidate, threaten, peddle his influence when he can.

Regrettably, the disaster at Crandall Canyon was clearly preventable. We now know that Bob Murray had prior knowledge of problems that were being experienced at the mine – even though he later denied that to the press and families. Let me say on behalf of the UMWA that we concur with the Report that, "...miners were exposed to unnecessary and extreme risks. The mine operator and MSHA must be held accountable for their failures of diligence, care and oversight."

Report of U.S. Department of Labor, Office of Inspector General - Office of Audit

Just 25 days after Chairman Kennedy's Committee issued its report, the Office of Inspector General (OIG) of the U.S. Department of Labor issued its own Report on findings regarding MSHA's involvement in approving the roof control plan, and then assuring the operator's compliance with the approved plan leading up to the Crandall Canyon disaster. The OIG investigation also considered some of the post-accident rescue and non-rescue activities. The OIG report found that:

> "MSHA was negligent in carrying out its responsibilities to protect the safety of miners. Specifically, MSHA could not show that it made the right decision in approving the Crandall Canyon mine roof control plan or that the process was free from undue influence by the mine operator. MSHA did not have a rigorous, transparent review and approval process for roof control plans consisting of explicit criteria and plan evaluation factors, appropriate documentation, and active oversight and supervision by Headquarters and District 9 management. Further, MSHA did not ensure that subsequent inspections assessed compliance with, and the effectiveness of, approved plans in continuing to protect miners. MSHA and mine operator officials worked together to develop rescue plans related to the August 2007 tragedy with MSHA exercising final approval authority over all activities. MSHA, however, lacked guidance on appropriate non-rescue activities."

The OIG found the Agency was complacent in enforcing the Mine Act. Moreover, it identified several instances where MSHA personnel ignored its established protocol and modified a federal regulation to allow the plan to be approved, and then remain in place even after learning about material facts that should have caused it to reconsider. An MSHA Supervisor, after meeting with company officials, was found to have ignored the assessment by an employee under his direction that the roof control plan proposed at Crandall Canyon was not safe and should be rejected.

The OIG Report not only reinforces the findings of the HELP Committee, but it also validates what the UMWA has been saying for quite some time: In recent years, the Mine Safety and Health Administration has ceased to be the enforcer of the nation's mining laws and the protector of miners. Instead it is more concerned with increasing operators' production and growing their bottom lines. This was never what Congress intended when it enacted our mining laws, whether in 1969, 1977 or in 2006. The Agency needs to return to its fundamental purpose: that is, to protect the health and safety of miners.

Like the HELP Committee Report, the OIG Report underscores the need to create an independent body to investigate mining accidents and disasters. The UMWA has been calling for an independent investigative body for decades. For the record: MSHA has clearly demonstrated time and time again its inability to police itself. The UMWA is once again recommending the establishment of an independent body to conduct post-accident investigations.

Assessment of Civil Penalties

On February 7, 2008, MSHA issued its *Criteria and Procedures for Proposed Assessment of Civil Penalties; Final Rule*, 30 CFR Part 100. The rule became effective March 10, 2008.

The intent of Congress was to have MSHA revise its penalty assessment program in such a way that it would force <u>all</u> mine operators to comply with the Mine Act and regulations. The Agency, contrary to this directive, has offered a plan that separates the assessment program into several different and inequitably applied schemes. The Agency's proposal will permit small mine operators to avoid appropriate fines for violating the law, while holding large mine operators to much higher standards and penalties. The Agency also proposes tolerating a more relaxed set of criteria at metal/non-metal operations. This approach does not

enhance the health and safety protections for the nation's miners and will not force large segments of the industry, that obviously need additional inducements, to take necessary action to comply with the law.

Rather than adopt an approach that forces across-the-board compliance, the Agency – while incrementally increasing the initial civil penalty – mitigates the overall effect of this increase by applying an outdated and failed litmus test to determine what operators are actually assessed. However, the criteria will in practice reduce the penalties to some of the most dangerous operations. These mitigating circumstances include:

(1) The appropriateness of the penalty for the size of the business of the operator charged;
(2) The operator's history of previous violations;
(3) Whether the operator was negligent;
(4) The gravity of the violation;
(5) The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after a notification of a violation; and
(6) The effect of the penalty on the operator's ability to continue in business.

If a small mine operator is unable to financially comply with mandatory health and safety standards, then they should not be in business. Coal miners are exposed to enough inherent dangers without also tolerating an operator's non-compliance due to a financially precarious operating budget. We would hope that the Agency is not saying that miners employed at small mines should be afforded fewer health and safety protections than those afforded to miners at larger mines. If so, this essentially gives smaller operations the license to kill and maim.

Some of these standards should have been eliminated when MSHA drafted its new regulation. The Union believes the Agency's 30 years of experience in gathering information on mine operator violations and assessing penalties is sufficient to apply the mandate of Congress in a far more targeted manner.

MSHA should be able to determine what operations require special attention. The Agency is aware that small mine operators generally do not offer their miners the same level of protection as do larger operations. While MSHA has identified some of these areas of special concern, such as by initiating the tri-State

initiative and the small-mine department, it should also use this knowledge to more effectively protect miners employed at small mines. Giving small mine operators a break in the penalty scheme is not the answer.

The Agency must consider if the potential for a penalty is sufficient to force an employer to correct an existing problem prior to the arrival of an inspector. In particular, at small operations – that do not usually receive frequent inspections – management simply will not be induced to take a proactive approach to health and safety based on this rule. In real terms, will this cause the small operator to replace a worn tire when it becomes hazardous without intervention by the Agency? Or will it permit them to continue to operate the hazardous equipment because the ultimate fine will be $100 and a new tire costs $20,000? The penalty must fit the violation and in some instances that requires greater enforcement sanctions by MSHA.

The Union believes the baseline penalty for all citations of a similar nature should be identical without regard to any mitigating factors, especially mine size. After all, a miner is a miner. The Agency should therefore consider increasing the size of the penalty based on the immediate conditions of the violation. The appropriate criteria should include:

a) The operator's previous violation history (over the past 24 months);
b) The degree of operator negligence;
c) The gravity of the violation; and
d) The number of persons who were or would have been affected/injured by the condition had it been permitted to continue to exist.

There should be no circumstances or factors that are permitted to mitigate the amount of the assessment. This must include giving no consideration to the size of the penalty in reference to the size of the operator, any demonstration of good faith to correct a cited condition or the affect on the operator's ability to continue in business. Non-compliance at small mines is not a new problem. It has existed for well over 30 years. Miners are being injured and dying at these operations in disproportionate numbers, and MSHA needs to act accordingly.

Miners at all operations, no matter what the size, deserve the same protection under the law. There can be no special circumstances that would permit any violation to be viewed as less severe based on unrelated and outdated criteria. The Union would recommend that Congress direct the Agency to correct these flaws in the current regulation.

Pattern of Violations

The decision by MSHA to exercise its authority under 30 CFR Part 104, Pattern of Violations, represents an important step in achieving greater compliance. This regulation identifies mine operators who have, "established a pattern of significant and substantial (S&S) violations at the mine." Using this standard as a routine tool to induce compliance will have a beneficial impact on health and safety.

Whereas MSHA previously failed to use this power, it has begun to take advantage of this compliance tool to progressively increase pressure on operators and force them to address health and safety problems at their operations. The operators thus have significant control over the severity of their own regulatory penalty. Operators who move to correct hazardous conditions are removed from the pattern system. Operators who seek to continue the status quo or resist the Agency's attempt to force compliance will suffer increasing regulatory intervention by MSHA. Ultimately, operators who refuse to voluntarily follow the law will be issued orders to withdraw all miners from the affected area until the Agency is satisfied that the condition has been corrected. This type of enforcement, while rare, is necessary and appropriate in some cases.

The Union is pleased to see that MSHA has finally decided to use this available tool to increase pressure on mine operators who habitually violate the law.

Flagrant Violations

Section 8(b) of the MINER Act states that, "Violations under this section that are deemed flagrant may be assessed a civil penalty of not more than $220,000." The Act defines flagrant to mean, "...reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially or approximately caused, or reasonably could have been expected to cause death or serious bodily injury..."

The UMWA is pleased to see that MSHA has been exercising this new authority to apply enforcement leverage to uncooperative operators. We encourage MSHA to continue to use the "flagrant" power and to do so in a consistent and even-handed manner to effectively protect the health and safety of all miners.

We only wonder how it was that Crandall Canyon has escaped this enforcement tool!

Conferencing of Citations

The Union previously expressed concerns about the ability of mine operators to abuse the conference system. Our concerns were validated insofar as many operators were overwhelming the process by requesting a conference for almost every citation issued by the Agency. Internal company documents obtained during the HELP Committee investigation of the Crandall Canyon disaster proved this to be a deliberate strategy of that mine operator. It is apparent that other operators employ this tactic, too.

This "plan of action" by operators created several problems within the Agency. The sheer volume of citations conferencing officers were approving for hearings limited the Agency's ability to prepare and defend the citations. In most cases, the mine inspector who issued the citation was unable to attend the conference to explain the reason for the citation, leaving the conferencing officer with no first-hand knowledge of the conditions cited. As a result, most of the citations that went before the officer were reduced or abated. In reality, by overloading the system, the mine operator could reduce or eliminate its liability and therefore the amount of the civil penalty. This problem has existed for many years and should have been addressed previously.

We believe that MSHA has taken an important first step – albeit belatedly – in addressing this issue. On February 4, 2008, Kevin Stricklin, Administrator for Coal Mine Safety and Health, and Felix Quintana, Administrator for Metal and Non-metal Safety and Health, issued Procedural Instruction Letter (PIL) No. 108-III-1 to adjust the conferencing system. The PIL generally limits conferences to unwarrantable failure and high negligence violations, albeit with a window for other challenges when appropriate. This should prevent the operator abuse that previously plagued the system.

Closure Orders

MSHA needs to understand that greater compliance pressure must be placed on some operators in the industry. History has shown that as long as production continues, some mine operators do not feel compelled to comply with health and

safety laws or correct outstanding violations. The Union has long urged MSHA to require the cessation of all production work and the withdrawal of miners, except those needed to correct the hazardous condition(s). This approach will force rogue operators to comply with the law and encourage a culture more focused on health and safety.

The Union believes that the Agency has had this authority under Section 104 of the Act; we recently learned that MSHA plans to exercise this authority when needed to coerce compliance. While we feel this is long overdue, we nevertheless appreciate this new directions.

Belt Air

An outgrowth of the MINER Act, the Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining (Panel or TSP) began its work in January 2007. In the following 18 months, the TSP held various meetings around the country and toured several mining operations to gather relevant information. On December 18, 2007, after completing their analysis, the Panel issued 20 consensus recommendations to the Secretary for consideration.

The Union is generally pleased with the work of the Panel and would credit it with compiling extensive documentation and testimony on the subject and using that information to recommend important improvements in mine health and safety.

The Union still believes that use of belt air is generally unsafe for numerous reasons, many of which the Panel identified and noted as being unsafe. Though the Panel failed to recommend the banning of belt air, it determined that for certain operations, based on geology, depth of coal seam and methane gas liberation, the use of belt air can be justified *so long as* other protections are provided. Indeed, the Panel suggested that protections beyond those currently required by MSHA's belt air rule be added whenever belt air is approved.

The Panel indicated that the 2004 belt air rule that MSHA promulgated – over strong UMWA objection – is not sufficiently protective of miners. It also expressly noted that most current mining operations do not require the use of belt air and, absent a demonstrated enhancement of safety, should not be permitted to use it.

The Union believes that MSHA should begin the process of promulgating a new belt air rule. This rulemaking process should be expedited and follow the recommendations of the TSP. Also because of pressure from mine operators on MSHA District personnel, the Agency must take steps to see that the Headquarters staff oversees all requests for the use of belt air.

Belt Flammability

The question of belt flammability has been a concern of the UMWA and other health and safety organizations for at least a few decades. Attempts to promulgate a rule with regard to flame-resistant belts began in the early 1980s, but such a rule was never completed. Then in 2002, the Assistant Secretary for Mine Safety and Health, David Lauriski, a former coal mining executive, removed the "belt flammability rule" and 16 other then-pending regulations from further consideration. Failing to develop a protective rule on belt flammability was costly when a belt fire at Massey Energy's Aracoma Alma No. 1 Mine claimed the lives of 2 miners on January 19, 2006.

The TSP that considered belt air also analyzed belt flammability and urged MSHA to immediately re-propose and implement the rule that was previously proposed but withdrawn in 2002 – Requirements for Approval of Flame-Resistant Conveyor Belts.

There was also consensus among the members of the Panel that all mines, regardless of whether they use belt air or not, should be required to install belts that meet the new flame-resistant requirements. The Panel also recommended that operators install additional fire detection hardware and software to current atmospheric monitoring systems (AMS) in order to use belt air. The Panel further recommended the use of smoke detectors in conjunction with CO sensors and suggested that MSHA consider other gas detection devices, too. Further, all AMS records in any mines using belt air should be reviewed by MSHA inspectors during regular inspections to determine the number and nature of all false alarms.

The Union is convinced that a belt flammability rule is long overdue. The Union urges MSHA to begin the process of promulgating a new belt flammability rule. This rulemaking process should be expedited and follow the recommendations of the TSP.

Sealing of Abandoned/Worked-out Areas

In May 2007, MSHA issued the Final Rule: Sealing of Abandoned Areas, 30 CFR Part 75 § 335, § 336, § 337, § 338 and §371. The Union is generally pleased with most of the requirements in that rule and thanks MSHA personnel and support staff for their hard work on behalf of the nation's miners. The Union believes that some of its recommendations that MSHA failed to include in the rule are still necessary and should be pursued by the Agency.

In particular, we believe that all seals, no matter what the static or dynamic pressure rating, should be equipped with devices to monitor the atmosphere it is designed to separate from the active workings. This monitoring should be done through a combination of surface boreholes and seal sampling tubes (at least two sampling tubes should be placed in the highest seal in each bank of seals constructed). This approach would permit mine operators, miners and the regulatory agencies to be aware of the atmospheric conditions in the sealed area. We believe that this monitoring scheme would be more protective of miners.

The UMWA also believes that MSHA should re-consider whether to restrict some materials from being used to construct seals. The use of some materials, such as Omega Blocks and wood, have no place in seal construction at underground mining operations. They do not offer the necessary protections outlined in the Mine Act and should be prohibited for such applications. The ineffectiveness of Omega Block seals was witnessed firsthand at Sago.

Communication/Tracking Devices

The UMWA is pleased that MSHA, with the assistance of the National Institute for Occupational Safety and Health (NIOSH), is in the process of evaluating and testing several communications systems for in-mine use. Likewise we are pleased that MSHA has agreed to expedite the approval process for all such devices. Based on the current status of these devices, we agree with the Agencies' dedication of significant resources toward developing a two-way wireless communication system. We also agree with their assessment that development of the system is the most technically challenging, and that once it is completed a tracking system can easily "piggy-back" onto the existing communication system.

There has been some progress with respect to wireless technology for underground mining application. However, despite recent announcements that a wireless tracking system has been approved by MSHA's Approval and

Certification Center (A&CC), it must be pointed out that the approved system is not entirely wireless. The Mine Tracer Miner Location Monitoring System made by Venture Design Services, Inc. uses infrared RIF readers placed at specific locations in mine entries to track miners who are wearing a transponder as they pass the reader. It is capable of transmitting this information wirelessly for several thousand feet, *provided* the readers are installed in a line-of-sight configuration. However, the information is transmitted to a distribution box that requires a hard wire connection from the underground to the surface.

While these advances are important, we need to continue to pursue truly wireless technology if we are to achieve the mandates of the MINER Act and offer miners the best chance of rescue in an emergency situation. To reach this goal, it is critical that Congress allocate sufficient dedicated funds to both MSHA and NIOSH to compete this important task.

Mine Inspectors/Mine Inspections

Approximately 273 individuals were hired into inspector positions, and the first hires have nearly completed their initial training.

This does not solve MSHA's long-term problem. Like the entire mining community, much of the current inspectorate will reach retirement age in the next five years. The General Accounting Office recently estimated that approximately 41 percent of those eligible (154 inspectors) will leave the Agency by 2012. Thus, it is imperative for MSHA to regularly and continuously hire inspector trainees.

An additional benefit of planning for substantial retirements will result in the return of MSHA's ventilation, roof control, electrical and other specialists to their primary assignments – carefully reviewing and addressing mining plans submitted by the operators – rather than serving as fill-in inspectors.

Regulations

In addition to the issues already raised during my testimony, the UMWA also believes that MSHA must adopt an aggressive regulatory agenda to address these other important issues to enhance health and safety protections for miners:

1. Improve atmospheric monitoring systems (note the Technical Study Panel addressed this issue);

2. Develop a nationwide emergency communication system;
3. Reduce miners' occupational exposure to coal mine respirable dust;
4. Update air quality chemical substance and respiratory protection standards;
5. Promulgate a rule on confined spaces;
6. Promulgate a rule on surge and storage piles;
7. Reduce respirable crystalline silica exposures;
8. Provide for verification of surface coal mine dust standards; and
9. Promulgate a rule on requiring continuous monitoring of coal mine respirable dust in underground coal mines.

Independent Investigative Body

The UMWA has been advocating the creation of an independent investigative body, much like the National Transportation Safety Board or Chemical Safety Board, to investigate post-accident mine tragedies. Recent events in the nation's coalfields have only reinforced the need for such a board.

For many years, we have realized that mine operators cannot be trusted to police themselves. In 1969, 1977, and again in 2006, Congress reached this inescapable conclusion. While MSHA was created to protect miners, in recent years we have witnessed the Agency cower to industry pressure. Too often it concerns itself about the potential cost of issuing new or improved regulations and enforcing existing laws, rather than focusing on protecting miners. The two Crandall Canyon reports cited earlier in my testimony demonstrate problems internal to the Agency.

MSHA must be required to return to its core mission and offer comprehensive and strict enforcement of the nation's mining laws. Further, the Agency does not possess the ability to conduct thorough and independent investigations into its *own* conduct and the role it plays in mine disasters and near misses. It can no more conduct an impartial investigation into its own contribution to a mining disaster than could the operator of the affected mine.

Therefore, it is extremely important for the long-term survival of the Agency and ultimately the health and safety of miners across the country that a truly independent body be assigned a key role in investigating MSHA's and the operators' role in such horrific events. Failure to do so will inevitably lead to more death and sorrow in the nation's coalfields.

Program Funding

Based on the mandates of Congress, it is imperative that increased and sustained funding be available if we are to offer miners the greatest protection possible. The Union would, therefore, also urge Congress to adequately fund other agencies and programs that advance the health and safety of the nation's miners. These include:

- Pittsburgh Research Center
- Lake Lynn Experimental Mine and Facility
- Appalachian Laboratory for Occupational Health and Safety, Morgantown, WV
- MSHA's Approval and Certification Center
- Personal Dust Monitors (PDM)
- Colorado School of Mines

Supplemental Miner Act (S-MINER)

In 2006, having witnessed back-to-back tragedies at Sago, Aracoma and Darby, Congress determined that something was very wrong with coal mine health and safety. The passage of the MINER Act of 2006 helped re-direct MSHA to its core mission, at least concerning the post-accident events. However, as already provided in this testimony, and the HELP and OIG Reports very well articulate, we have much more to do before many of the identified problems are corrected and the many needs not addressed by the MINER Act are acted upon legislatively. The S-MINER Act, which your colleagues in the House passed last year, provides an excellent means for fixing remaining shortfalls in miners' health and safety.

At the time of the signing of the MINER Act, we hailed it as an important *first step* in addressing the hazards and dangerous conditions miners face daily. We still believe that once fully implemented as Congress intended, it will be very beneficial to miners who find themselves attempting to survive or escape a mine disaster. But that was not enough. Now is the time to move forward with additional legislation to help prevent such disasters from occurring in the first place.

The time has come to move forward with the S-MINER Act. This legislation that was passed out of the U.S. House of Representatives on January 16,

2008 is the first measure since the passage of the 1977 Mine Act aimed at *preventing* accidents and disasters. There can be no doubt that such a law is long overdue.

While we have discussed some of the health and safety enhancements still needed and which are contained in the S-MINER Act, it is important to review that proposed legislation as an integrated whole. If enacted, the S-MINER Act would offer greater protection to miners by:

- Requiring a communication system, at least as effective as a leaky feeder system, be installed in all mines within 120 days of enactment of the legislation; also mine operators wold need to upgrade to better systems as the technology becomes available.

- Requiring mobile emergency shelters within 500 feet of the working face in all working sections within 60 days.

- Seals – all seals designed to withstand less than 240 psi would be monitored:

1. Through at least one seal in each bank of seals.
2. Through surface boreholes.
3. Within one year, monitoring would be done by a continuous device.
4. Applicable to metal/non-metal mines.

- Ventilation Controls – within 1 year all stoppings in sections other than pillar sections would:

1. Be constructed of solid blocks, laid wet, sealed with bonding agent on at least the intake side.
2. Pillar sections may use hollow blocks and bonding agent.

- Flame-Resistant Belts – by December 31, 2012 all belts would have to meet the flame-resistant requirements recommended by NIOSH. Shall apply to metal/non-metal mines.

- Belt Air – by June 20, 2008 MSHA would have to revise its regulations and approve the use of belt-air only by the 101(c) petition process. Petitions would have to demonstrate significant safety

constraints requiring their use and the operator would have to agree to MSHA's requirements for such usage. Mines currently using belt air could continue for currently developed areas.

- Communications – Pre-Shift Review of Conditions

1. Upon exiting the mine, the foreman, examiner or other agent of the operator would have to meet with their cross-shift and verbally communicate the conditions in the mine.

2. The incoming foreman, examiners or other agents would have to communicate this information with all members of the crew.

- Atmospheric Monitoring – all areas where miners work or travel would have a continuous atmospheric monitoring system installed.

- All miners working alone for any part of a shift would be equipped with a device to measure levels of methane, oxygen and carbon-monoxide.

- The National Academy of Science would undertake a study of lightning and offer recommendations to the Secretary to better protect miners, with the study to be completed within 1 year.

- Barrier Reduction and Pillar Recovery – Special internal plan review process for operations engaging in such work at depths greater that 1,500 feet or at a mine with a history of bumps.
    - -- Operator would have to have an approved plan.
    - -- Operator would have to notify MSHA one week before beginning such mining.
    - -- MSHA would respond to notice in writing.
        - – to ensure all miners engaged in such work are trained.
        - -- to witness such work to ensure it is done safely.
        - -- could stop such mining at any time for safety reasons.
    - -- National Academy of Science – would study the issue and make recommendations if necessary.

- SCSR Random Testing Program
    - -- NIOSH would conduct annual random sampling of SCSRs in the field and determine the number to be sampled annually.
    - -- Operators would be responsible to purchase replacement units.

- MSHA Approval Center Priorities

1. Next generation SCSR.
2. Wireless communications.

- NIOSH Research Priorities for next 5 years
  1. Next generation SCSR.
  2. Battery technology for communication and Personal Dust Monitor.
  3. Advancing mine rescue team technology.
  4. Improved ventilation controls.
  5. Development of a mine-wide monitoring system.

- MSHA's Inspection force

1. Creation of Master Inspector Position (increased responsibility and pay).
2. Lifting the employment limits to train new inspectors before current ones retire; bar to be lifted for 5 years.
3. If new inspectors cannot be hired in adequate numbers, retired inspectors could be employed on a contract basis.

- Creation of the Office of Ombudsman within Office of Inspector General.
  1. Appointed by the President.
  2. Approved by the Senate.
  3. Handles confidential complaints of miners, family members and others.
  4. Toll free phone number and internet site for contact.
  5. Tracks injuries, illness and violations.
  6. Monitors Secretary of Labor's efforts on behalf of miners.

- Pattern Of Violations
  1. Clarifies how to determine a pattern of violation.
  2. Sets criteria for removal from pattern of violation status.
  3. Fines for pattern from $50,000 to $250,000.

4. Withdrawal of miners from the entire mine when deemed necessary. No other work shall be performed during this time except to correct outstanding violations.

- Failure to Pay Penalty in a Timely Manner

1. If no notice of contest is filed in 30 days, the citation is considered final and not subject to appeal.
2. MSHA may cease production at the operation for failure to pay fines.

- Factors for Assessing Penalties

1. Assessment will be based on the size of the operator, not the size of the mine.
2. The ability for the operator to stay in business will no longer be factored in.

- 105(c) discrimination penalties will be $10,000 to $100,000 for each occurrence.

- 107(a) imminent danger citation requires immediate withdrawal of all miners until the condition is corrected.

- Establishment of a new Emergency Call Center manned 24/7 by people with mining knowledge.

- Creation of a Mine Map Repository at the DOL and a website for public access.

Conclusion

Having dedicated the better part of my career to improving miners' health and safety, I have investigated many tragedies, visited many injured miners, and consoled many grieving family members. We can appreciate the improvements that have been made in the last two years, but so much more is needed.

Our job is not yet completed. The tendency to move down the path of least resistance, even at the expense of miners' lives, still surfaces at times. The mine operator mentality by MSHA's top officials can still be witnessed

in the drafting of regulations. MSHA still allows mine operators to ventilate working sections with belt air, and non-flammable belts are still not required. Today there are no fully-reliable systems that would enable miners to communicate with the surface or vice versa in the event of an emergency. Many operators would not be able to locate their trapped miners. This is unacceptable.

It is time for bolder action and bigger steps. MSHA must be convinced or directed to implement *all* the provisions of the MINER Act, as Congress mandated. And the Senate should pass the S-MINER Act. These are the keys to protecting the nation's miners. As members of this Committee and of Congress are in the best position to insist that MSHA utilize all the tools you have given the Agency.

Madam Chairman and members of the Committee, we thank you for your help and interest in improving miners' health and safety.