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**Committee on Health, Education, Labor, and Pensions**

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**Current Mine Safety Disasters: Issues and Challenges**

On behalf of the United Mine Workers of America (“UMWA”), I appreciate having this opportunity to testify about the many health and safety issues and challenges that continue to confront miners in this country. The UMWA has been an unwavering advocate for miners’ health and safety for 117 years.

It is with great sadness that I appear before you today to discuss – yet again, and in far too short a span of time – the deaths of mine workers. We pray for the families of the six miners who remain trapped in the Crandall Canyon mine, and for the families of the brave rescuers who perished trying to rescue them. Seven of those miners have family members attending this hearing. I wish to both acknowledge their presence, and to personally express my deep sorrow to them as well as my gratitude for their coming to the halls of Congress to witness and participate in the legislative process. Together we seek to ensure that what happened at Crandall Canyon will never be repeated.

I come out of the coal fields, having been an underground coal miner for 19 years where I was elected and served as Chairman of the Local Union health and safety committee. From there I was appointed as an International health and safety representative for the United Mine Workers of America’s for 9 years. In 2005 and currently I serve as the Administrator of the UMWA’s International Health and Safety Department giving me 30 years experience in the coal mining industry. I have participated in and spoken about the recent and most tragic mining disasters of the last decade, including the Jim Walters No. 5 mine explosion in September 2001, the three multi-fatal coal mine accidents of 2006: Sago and Aracoma, both in my home state of West Virginia and Darby in Kentucky, as well

as other mine fatal related investigations. I was also recently appointed by Utah Governor Huntsman to the Utah Mine Safety Commission to consider a number of issues that arose in connection with the Crandall Canyon disasters.

Last year this Committee was instrumental in enacting legislation that brought about the first improvements to miners' health and safety legislation for nearly thirty years. Nevertheless, there are many more improvements yet needed to ensure that miners can return home after a day's work, and not fall ill from their work. I will offer you some of my thoughts about areas of concern based specifically on the Crandall Canyon disasters, as well as the coal mining disasters of 2006.

I appeared before this Committee's Subcommittee on Employment and Workplace Safety earlier this year to express thoughts about progress made since the MINER Act was passed last year and about the areas still requiring legislative attention. Today I will update and expand upon those remarks. The Crandall Canyon disaster demonstrates that the remaining needs are substantial.

### Communication and Tracking

Despite passage of the MINER Act over a year ago, very little has changed concerning the inability to communicate with and locate trapped miners. Despite the repeated assurances at press conferences by Bob Murray that he knew exactly where to find the miners trapped in the Crandall Canyon Mine, eight weeks later the six trapped miners still have not been located. It goes without saying that until they can be located, recovering them is virtually impossible. Yet, we still ask that the miners be recovered and brought home.

The situation at Crandall Canyon stands in stark contrast to the experiences last year when a Polish miner was pulled from wreckage after he was located through use of a tracking device, and when Canadian miners trapped underground were safely retrieved from the safety chamber to which they had retreated. Throughout the last eighteen months, we have learned more about what is available in terms of communications and tracking, but very few operators have taken advantage of the technology and equipment that is available. Yet, if other countries' miners can survive and escape these disasters, then so should American

miners. We need change, and we need it now. Why our miners do not have the benefits of these protections is a key question that demands an answer in the wake of the Crandall Canyon disaster.

MSHA and the industry must aggressively require the use of improved communication systems and tracking devices. Improved communication and tracking technology, including one-way text messaging and two-way wireless systems, is available now and should be immediately installed in all mines. Any system that can increase the ability for miners to escape or be rescued from a mine emergency, even if it is limited in scope, must be utilized. The federal government, through NIOSH and MSHA, should fund and direct continued studies and research to develop the next generation of tracking and communication devices. As this newer technology becomes available, mine operators should be required to upgrade existing systems at all their operations.

### The Risks of Pillar Mining at Crandall Canyon

Unfortunately, all the factors that lead to the catastrophic collapse at Crandall Canyon Mine may not yet be evident, and they may never be fully known. However, what is apparent after reviewing the available information and examining the mine map, is that the conditions that lead to this tragic event were man-made. The disaster at Crandall Canyon could and should have been prevented. Contrary to what some may say, there is little doubt that this was a man-made disaster.

We hope that by figuring out all that went wrong at Crandall Canyon we will be able to prevent further needless death. It is important to understand that the Crandall Canyon Mine was in the last stages of its productive life; it had already been in operation for about 50 years.

The previous operator, Andalex Resources, had extracted most of the mine's recoverable reserves utilizing a technique known as longwall mining. After completion of the final longwall panel the only remaining reserves were the "barrier pillars" and the mine's main entry pillars. Andalex Resources deemed this remaining coal crucial to maintaining the mine's stability. In documents it filed with the Utah Division of Oil, Gas and Mining that company stated,

“Although maximum recovery is a design criteria, other considerations must be looked at in the final analysis in the extraction of coal. These factors consider the insurance of protection of personnel and the environment. Solid barriers will be left to protect the main entries from the mined out panels and to guarantee stability of the main entries for the life of the mine.”

Despite these expressed concerns of Andalex Resources, email correspondence between the engineering firm of Agapito Associates, Inc. and Mr. Lane Adair of GENWAL Resources on August 9, 2006, indicated it had completed a preliminary review of the “...proposed retreat mining sequence in the Main West Barriers....” This correspondence occurred on the same day that Murray Energy Corp. apparently became the “controller” of the operation. On December 10, 2006, Agapito President and Director, Michael Hardy, sent a letter to Mr. Adair after visiting the Mine to “...review the ground conditions of the room and pillar mining in the north pillar along Main West. Mr. Hardy determined that, “There was no indication of problematic pillar yielding or roof problems that might indicate higher-than-predicted abutment loads.” Beginning ten days later, December 20, 2006, Murray Energy’s subsidiary, UtahAmerican Energy, Inc. (hereafter referred to as “Murray Energy”) submitted several amendments to the roof control plan to develop entries into the north barrier, Main West; it sought to remove pillars from those entries during retreat mining operations after the entries were developed. MSHA, District 9 Office in Denver, Colorado approved each of these plans.

In early March 2007, the Crandall Canyon Mine experienced a large “mountain bump” while pillar extraction was being conducted in the north barrier. The bump was so severe that Murray Energy abandoned its plans to develop the remaining north panel (consisting of approximately 54 pillars), and sealed the area. While it is unclear if Crandall Canyon Mine management officially notified MSHA of this event, the resulting seal plan that had to be submitted to the Agency should have at least raised questions about why the operator was abandoning that large area of the mine. It will be interesting to see whether MSHA will decide that the mountain bump of March 2007 was “reportable” under existing law; if that comes back negative, then we should consider what changes are needed to ensure that future events of that magnitude are considered by MSHA when it reviews a mine’s operating plans.

Before the large “mountain bump” in early March, Murray Energy had submitted plans to develop the south barrier of Main West. On March 8, 2007, MSHA approved a request by mine management to pillar the area. Pillar extraction continued until August 6, 2007, at which time the retreat mining was almost due south of the area where the bump had caused the operator to abandon the north barrier section. At that time, a catastrophic “mountain bump” trapped the six miners in the working section. The force of the bump registered approximately 3.9 on the rector scale at the University of Utah Seismic Stations.

Considering that only the north and south barrier pillars separated the mine’s main entries from vast areas of unsupported gob, and that the previous owner refused to mine these barriers for safety reasons, it is deeply distressing that Murray Energy sought to mine in this area, and submitted such plans to MSHA. Because of the extent of the previous mining there can be no doubt that the overburden was exerting extreme pressures on the remaining coal reserves. It is impossible to believe that development and pillar extraction of the barrier pillars in the Main West area of the mine, which began sometime after August 2006, would not adversely impact the conditions in the mine.

From all that we have seen, we believe that plans to perform pillar development and extraction of the barrier pillars at the Crandall Canyon Mine should never have been submitted. Further, and perhaps more importantly, MSHA is charged with protecting miners’ health and safety, and should never have approved such a request. It is high time for mine operators and MSHA to realize that miners’ lives, and not the mining product, is the most valuable resource of the mining industry. Only when this happens can we arrest the needless loss of life in our nation’s coal fields.

#### External Communications Problems at Crandall Canyon

It is unfortunate that the management team at the Crandall Canyon Mine spent so much energy trying to deflect blame in this tragedy. It is equally unfortunate that MSHA ignored the will of Congress in its reaction to this disaster.

Section 7 of the MINER Act states that MSHA “shall serve as the primary communicator with the operator, miners’ families, the press and the public.” Nevertheless, in Utah, it appeared as though MSHA surrendered its role as chief communicator. As a result, a great deal of inaccurate and misleading statements and information went over the airwaves. The effect was that millions of Americans were given incorrect and misleading information right from the start of this disaster, and MSHA allowed it to happen. Here are some examples:

- 1) From the very beginning, Murray Energy’s Owner and Chief Operating Officer, Robert Murray, asserted that “an act of God” in the form of a natural earthquake caused this catastrophe. He suggested that the “seismic activity” at the mine was uncontrollable and unrelated to his company’s activity. However, from tapes made of calls to the local Sheriff’s office that same morning, it is apparent that from the time it occurred, University of Utah seismologists believed the activity was the result of coal mining.
- 2) Time and time again Mr. Murray emphatically stated that he knew exactly where the trapped miners were. Yet eight weeks and many boreholes later he still has not been able to locate the miners.
- 3) Mr. Murray also strenuously objected to reports that miners were performing a final method of mining referred to by the media as “retreat mining.” Again, he was not giving true information: from the approved mining plan it is evident that this mine was in the process of “pulling pillars,” which is a particular type of retreat mining. Not only was this operation performing “pillar mining” or “pillar extraction,” but in communications involving this Mine, principals characterized this mining process as “retreat mining.”
- 4) Mr. Murray claimed that the mine was perfectly safe when he invited non-essential personnel from the media and families to tour the underground rescue work. However, not only did they experience a “bump” while they were underground, but it was in the same vicinity where nine rescuers were injured and three killed just days later.

- 5) Mr. Murray stated that he had not had any major accidents at any of his mines prior to this. The truth is that four miners have been killed at Mr. Murray's mines. Any time a miner is killed, that constitutes a major accident.
- 6) Mr. Murray continually said that the UMWA was trying to organize the Crandall Canyon mine, and that somehow was intended to suggest nothing we had to say about this incident could be trusted. While we strongly believe that all miners should have the benefits of a union contract – not the least of which is the enhanced safety language written into our contracts – we were not engaged in an organizing campaign at that mine at the time of the incident there, nor had there been any organizing activity at that mine for years.
- 7) Mr. Murray also claimed that the UMWA was responsible for the stories about the company intending to reopen a part of the mine to production, when in fact it was his own Murray Energy Vice President who made those statements to reporters.

These are but some examples of the inaccurate and misleading statements Mr. Murray made that met with no contradiction from MSHA – statements that were seen by many as having an “official” stamp of approval since in most cases they were made with MSHA officials looking on, making no attempt to correct him.

What was so astounding about the press conferences at Crandall Canyon is that the conduct of Mr. Murray, and MSHA's indulgence of him, were directly contrary to Section 7 of the MINER Act, which Congress expressly added to prevent the kind of misinformation debacle that occurred at the Sago mine. There, the families were first told their loved ones were alive and were leaving the mine, whereas the reality was that only one of the thirteen survived; it was hours before the misinformation was corrected.

Regardless of whether Mr. Murray may have wanted to convene and conduct press conferences, there was no reason, requirement or benefit to the miners, their families or the public for MSHA to participate in the events that he,

as the private operator, staged. As the federal Agency affirmatively charged with communicating with the families and press, MSHA should have exercised its power and conducted independent press conferences to provide objective reports of developments at the disaster site. Instead MSHA representatives yielded their authority; at best they stood in the shadows as the coal operator spun his story, at worst they cowered out of view refusing to correct the half truths and misstatements. Further, it has been widely reported that Mr. Murray's attitude was abrasive and demeaning to these grieving family members. MSHA's responsibility to serve as the liaison should have protected the families from him.

### Families Facing a Mine Disaster Deserve Better

In the MINER Act, Congress took action to ensure that families facing mining disasters would be treated with the dignity they deserve and would be kept abreast of the most accurate information available. This did not happen for the families of the trapped miners at Crandall Canyon. Like the Sago families in January of 2006, they were held almost as captives, awaiting any bits of information (or misinformation) delivered by the coal operator.

How is it possible that MSHA could get it so wrong in Utah? How could it ignore the mandates of Congress, which requires the Agency to take charge of such accidents and serve as the liaison with the families and press? By allowing this mine owner to take center stage, MSHA ignored the directives of the MINER Act. In so doing, it failed the families at Crandall Canyon. They deserved – and still deserve – much better. If the leadership of MSHA is not willing or able to limit the activity of a single mine operator in the face of express authority to take such control, how can we expect them to effectively lead the Agency that is charged with regulating an entire industry?

On behalf of their loved ones, the families of those trapped at Crandall Canyon asked the UMWA to serve as their miners' representative. They want their designated representative to participate in the accident investigation. However, MSHA has rejected their request, claiming that it would have to first verify that the miners themselves made the designations. Obviously, a trapped miner cannot provide that assurance. Their next of kin attempted to fill the void to ensure that the trapped miners have a representative looking out for their



interests.

By denying the family members a right to designate a miners' representative for their trapped miners, MSHA has essentially said that when miners are trapped in a mine, they forfeit their right to designate a Section 103(f) representative; their Mine Act rights are thereby nullified through no fault of their own. In denying the families the right to make such a designation *for* their trapped miners, MSHA has prevented those most affected by the tragedy from having a voice at the table during the investigation. This is offensive and must be corrected.

MSHA's spokesperson criticized the UMWA for attempting to serve as the trapped miners' designated representative, claiming that we "are trying to use a law enforcement investigation for its own purposes." We confirm that the UMWA *does* have its own purpose in mind. The reason is simple: we want honest and complete information about everything that happened -- from before the latest mining plan got prepared, submitted and approved. We want to make sure no more miners' lives are needlessly lost. The UMWA is the **ONLY** organization in this country that is dedicated to advocating for miners' health and safety. We are proud of advancements that have been made at our urging, and we don't plan to stop anytime soon.

So yes, the UMWA does have a purpose of its own here: to fight for and improve mine safety in America. We invite MSHA to join us in that endeavor, instead of casting veiled aspersions on our efforts on behalf of coal miners and their families.

To the extent that MSHA feels current law may not allow it to recognize the UMWA as a miners' representative absent proof that the miners themselves have made the designations -- something the trapped miners obviously cannot satisfy -- we urge Congress to change the law. Family members of those trapped, injured, or killed in a mine accident should have the right to designate a trusted representative to participate in the accident investigation.

MSHA has further indicated that *regardless* of whether the UMWA would be recognized as the miners' Section 103(f) representative, the Agency plans to limit attendance at witness interviews to just MSHA and representatives of the

State of Utah. Not only is the Agency excluding the UMWA, but MSHA is refusing to share access to interviews and documents with the Utah Mine Safety Commission until *after* MSHA completes its investigation, which will likely be many months from now. It is also denying such access to the press.

While MSHA claims that providing such access might “compromise the integrity of the investigation and potentially jeopardize MSHA’s ability to enforce the law,” we are skeptical of the asserted bases for restricting access. Moreover, this is materially different from how MSHA conducted investigations of the Jim Walters and Sago disasters. I participated in both of those investigations and the UMWA had access to information *while* MSHA pursued its investigation. After making our own independent review of the facts from each disaster, the UMWA issued separate reports: they were critical of MSHA, as well as the respective operator. In considering MSHA’s rationale for denying access during its investigation at Crandall Canyon, it is important for you to know that MSHA has never claimed that access to other interested parties during either the Jim Walters or Sago investigations in any way compromised the Agency’s ability to engage in its law enforcement efforts.

We have asked Secretary Chao to reverse the position MSHA has taken both in response to our effort to serve as the trapped miners’ designated representative, and our request to attend the witness interviews. We await her reply.

Further, and as we have written to you, the UMWA feels that it is imperative that there be a truly *independent* investigation of this tragedy. A copy of the letter President Roberts sent to Congressional leaders is attached. Curiously, Secretary Chao *claims* to have appointed an independent team, but those she appointed assuredly are not independent. Rather her team is being led by two retired MSHA inspectors. Thus, MSHA and the operator are once again investigating what they themselves (i.e. their colleagues) did. This is not the best way to ask the hard questions or to get the full truth. Our goal must be to learn from what went wrong at Crandall Canyon so that no more families will suffer such needless loss of life.

#### Collection of Civil Penalties

In the MINER Act, Congress charged MSHA with revising and enhancing its penalty structure. While it has adjusted the penalty structure, the Agency still needs to do a better job of tracking and collecting the fines it imposes and enhancing the pressure when operators refuse to pay final penalties.

Last year MSHA blamed computer problems on its inability to track fines; we understand that it still faces some technological challenges. If that is the case, then MSHA needs to fix the problem. When fines go unpaid it not only gives an unfair competitive advantage to the delinquent operator, but that operator's disregard for the mine health and safety laws and regulations imposes excessive risk on its employees. Moreover, the fine system itself is not working well. Indeed, GAO reported that almost half of the fines that underground coal operators challenge are compromised, and that of those contested the fine has typically been cut by about 50%!

To the extent that MSHA takes the position that it cannot close an operation for having substantial unpaid fines, we submit that Congress should expressly grant the Agency such authority. MSHA's top personnel claim that if MSHA had that authority the Agency would exercise it to close operators who refuse to pay their fines. We would welcome that.

### MSHA Hotline and Retaliation

The Union has complained for some time that the current hotline system miners use to report hazardous conditions is ineffective. When a UMWA member called the 800 number listed on MSHA's website to report a problem at the mine, his call was answered by a contract employee who did not have any knowledge of mining, making it extremely difficult for the miner to convey his message. Further, the individual at the call center was not remotely familiar with MSHA's District structure and therefore did not know which office should receive the complaint.

The Union has stressed on many occasions that the MSHA hotline should be staffed 24 hours a day, 7 days a week by MSHA personnel with an understanding of both the mining industry and the Agency. The current practice of contracting this work out to call centers lessens miners' health and safety.

Also, many miners are reluctant to voice their concerns about safety and health problems due to a fear of retaliation and black-balling. Coal mining jobs are good jobs and in many mining communities they are by far the best (if not only) jobs to be had. Unfortunately, the problem of retaliation plagues the entire industry, from East to West, and North to South.

The most recent examples involve Crandall Canyon Mine owner Bob Murray. He has sent threatening letters to at least some of those who criticized him while the Crandall Canyon disaster was playing out. We understand that he has sent such letters to press and private citizens, as well as politicians.

The UMWA has its own experience defending against such claims of Mr. Murray. He sued the UMWA's Secretary Treasurer for comments made during a labor dispute we had with some of his Eastern operations. Though the UMWA successfully defended those suits and both were dismissed by the courts, his threats *could* serve to silence some would-be critics, and we suspect that is his chief goal. His threats are inconsistent with this country's notion of free-speech, though they illustrate the kind of challenges a rank and file miner might worry about before daring to speak out.

When miners fear that speaking out will cost them their livelihood, they remain silent, even when they have bona fide concerns about mine health and safety. I submit that no job is worth sacrificing your health or safety. It is the role of the government to protect miners' safety and health. The Mine Act states that plainly. Nevertheless, when miners are afraid to speak out, the government is not doing its job of providing them with adequate protection.

### Mine Rescue Teams

We are also troubled by MSHA's failure to undertake meaningful action to facilitate the creation and training of additional mine rescue teams. Over the past 20 years MSHA and some operators have weakened how the regulations regarding mine rescue teams are interpreted and applied. The existing mine rescue team structure is spread too thin. It takes a lot of time and much practice for any mine rescue team to function well.

Congress in the MINER Act clearly outlined its intent regarding the need for additional mine rescue teams. In addition, the language clearly defines how this is to be applied at both large and small mines. Nevertheless, MSHA's newly-proposed regulations fall far short of what is needed. We will be submitting comments through the rulemaking procedure, but I can tell you today that the regulations bear little resemblance to what we anticipated, and what is needed.

The MINER Act contains language that was negotiated between the union and management representatives based on numerous shared concerns. Both sides of the table were concerned about the inadequate number of rescue teams as well as the fall-off in training opportunities, and teams' participation in contests that offer them a chance to experience mock emergencies so they can respond with skill and confidence when they confront real disasters. The proposed regulations do not meet the statutory language or its intent.

Though the MINER Act provided for MSHA to certify mine rescue teams every five years, the certification process MSHA has proposed consists largely of paperwork reviews, rather than testing of rescue teams' practical skills. Thus, not only is the mine rescue system no better today than it was in January 2006 when it took many hours for the first teams to arrive at Sago, but the regulations MSHA has proposed will not induce the creation of more highly-skilled mine rescue teams. The need is real and it is immediate.

We believe MSHA will require additional funding to do the kind of certifications that are needed to ensure that mine rescue teams are qualified as contemplated by the MINER Act. The UMWA has training facilities and is willing to provide mine rescue training and first responder training if we receive the necessary funding. Miners cannot afford to wait any longer for the training of new teams to begin.

#### Additional Safety Issues and Challenges

- Miners should be provided multi gas detectors to alert them to the mine atmosphere they are working in.
- Atmospheric monitoring systems should be mandated at all mines to alert miners if any dangers occur throughout the entire mine, not just in the area they are working.

- We need to push the development of a new self-rescuer that will last longer and be more user friendly when switching from one to another if necessary during escape.
- Stronger ventilation controls should be required that are used to separate our fresh air escapeways that miners have to travel in the event of a mine fire.

### Additional Health Issues and Challenges

While my concern for miners' safety is substantial, I would be remiss if I did not also speak briefly about challenges miners confront with regard to outstanding health issues:

- Miners are still dying from Black Lung. The use of a new device called a Personal Dust Monitor can be a very helpful tool in keeping miners from being overexposed to high levels of dust concentrations.
- With the development of the PDM we also need to explore a new dust standard that would reduce the miners level of exposure to coal dust and silica.
- A new rock dust standard should be put in place that would decrease the amount of coal dust that is currently allowed to accumulate on the mine roof, ribs, and floor.
- Equipment manufacturers should be made to design less noisy mining machinery, which would help reduce hearing loss.

Addressing these matters would represent a good start in addressing today's challenges. If and when we can address all these issues then maybe we would bring our safety and health standards up to the 21<sup>st</sup> century. There are still other recommendations listed in the UMWA's Sago report, which has already been made available to you. That report can also be seen on our website at [UMWA.org](http://UMWA.org). We expect to be making further recommendations after more

information comes to light about all that transpired throughout the Crandall Canyon disaster.

We are most appreciative that Congress has worked towards increasing MSHA's budget so that more mine inspectors can inspect mines to ensure compliance with the Mine Act, which it now fails to accomplish. The need is immediate and continuing. We also need to take the next step in being more proactive in our approach to miners' protection. Operators have long been quick to introduce new technologies that improve production. It is time that they dedicate the same resources to the miners' health and safety.

I also urge you to do all that you can to ensure that the investigation of the Crandall Canyon disaster is full and independent and that the families touched by this disaster get all the answers they want and deserve.

### **Conclusion**

Although some changes have been made, I am sorry to report that MSHA's efforts over the past year have done little to change much for miners confronting a mine emergency. The Crandall Canyon disaster made that all too apparent.

We are here to demand that MSHA commit to a full and consistent enforcement of both the Mine Act and the MINER Act, to improve miners' health and safety so that our industry will never again experience another mine disaster like Jim Walters, Sago, Alma, Darby, or Crandall Canyon. New technology is progressing on a daily basis and the UMWA urges MSHA to require mine operators to employ these technologies as they become available.

We also seek assurances that MSHA will be aggressive in performing all mandated inspections, protecting miners who speak out for mine health and safety, assessing and collecting meaningful penalties when operators violate the law, and taking the lead when disaster strikes.

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

