United Mine Workers of America
Testimony of Dennis O'Dell
before the
U.S. Senate Subcommittee on
Employment and Workplace Safety

May 22, 2007
Hearing Room 628
Dirksen Senate Office Building
Washington, D.C.

Promises or Progress: the MINER Act one year later

Thank you for allowing me this opportunity to appear before your Committee. As Administrator of Occupational Health and Safety for the United Mine Workers of America ("UMWA"), I represent the union that for 117 years has been an unwavering advocate for miners' health and safety.

Congress has played a significant role in advancing miners' health and safety and I would like to express my appreciation to the leadership of this Committee for your efforts to further protect the health and safety of all miners. Your continued oversight is critical to ensuring miners will go home safely at the end of their shift.

Over a year ago, shortly after the Sago and Alma disasters, many from the mining community testified at various Senate and Congressional hearings about inadequate protection for miners' health and safety. Following the Sago and Alma disasters and after five more miners were killed on May 20, 2006 at the Darby Mine in Kentucky, Congress moved to enact the MINER Act. That law includes several important provisions aimed at helping miners *after* a mine emergency develops. It is most appropriate for you to consider whether the improvements Congress intended to accomplish through the MINER Act are being realized. The Union supports MSHA's efforts to require substantially more oxygen for every miner. The emergency mine evacuation rule also contains a number of important improvements. Having said that, my testimony will focus attention on areas that MSHA needs to dedicate additional resources to fully implement the MINER Act.

Some of the inadequacies in implementing the MINER Act may be linked to insufficient resources. However, others can be tracked to decisions made by the Agency. In 2001, then Assistant Secretary for Mine Health and Safety David Lauriski told members of

the National Mining Association that MSHA would "collaborate more with mine operators on regulatory initiatives" and become "less confrontational with mine operators in an effort to provide companies with better compliance assistance." At a meeting with mine operators in Hindman, Kentucky, he bragged about his diminutive regulatory agenda. He noted, "If you've seen it you noticed it's quite a bit shorter than some past agendas." These policy statements were accompanied by a withdrawal of many proposed regulations by MSHA and a noticeable shift to compliance assistance. These compliance assistance programs divert precious resources away from enforcement. Perhaps most tragically and in many cases, MSHA has ignored the mandate of Congress by adopting regulations and policies that place miners at greater risk.

Mine Inspectors / Mine Inspections

The Agency is experiencing great difficulty in fulfilling the mandatory inspections required under the Mine Act. The Union is convinced that the hiring and training of more MSHA inspectors must be a top and continuing priority. The Agency must have a full complement of properly trained personnel if it is to perform its primary job of enforcing the Mine Act. The ranks of the inspectors have been diminished over the years and we can expect further reductions as more of MSHA's long-time inspectors leave the profession as they reach retirement age. GAO identified this anticipated problem in 2003, yet GAO reports again in 2007 that MSHA still does not have a plan in place to address the anticipated retirements of its inspectors. Inspector positions must be filled by hiring qualified individuals from all segments of the industry, including rank and file miners. Current and new inspectors must all be outfitted with state of the art equipment for personal protection and to perform their inspection duties. Sufficient monies must be allocated to ensure this equipment is readily available to these inspectors.

As the number of inspectors have decreased, MSHA's field office specialists including ventilation specialists and its electrical and roof control support staff have been forced to carry out routine mine inspections. These specialists must be returned to their areas of expertise. The only way to accomplish this is to hire an adequate number of inspectors that will permit the specialists to focus on the job they are trained to do. In addition, the Agency must move immediately to train a sufficient number of inspectors to perform these technical tasks in the future.

Congress must also ensure that funding levels at the Mine Academy in Beckley, WV remain sufficient to meet future training needs for mine inspectors. This facility is used to train mine inspectors and also offers comprehensive training for miners and other health and safety experts.

Seals

In 1969 and again in 1977 Congress mandated that "explosion proof seals or bulkheads" be used to isolate abandoned or worked out areas of the mine from active workings. However, in the years since, MSHA has promulgated regulations regarding seals that are much less protective than what Congress mandated. The standard was further eroded when MSHA approved the use of Omega Block type seals such as those that were used at Sago. These Omega Block seals catastrophically failed as a result of the explosion at Sago and contributed to the deaths of all twelve miners.

While we applaud MSHA's recent release of their Emergency Temporary Standard on seals, the UMWA urges MSHA to require the construction of seals that meet the mandates of Congress in that they are to be explosion proof. We have further suggested in our comments to NIOSH's draft report that all newly erected seals from this point forward be continuously monitored regardless of its psi strength.

Regulations

The UMWA believes that MSHA should adopt an aggressive regulatory agenda to address important issues in addition to those contained in the MINER Act, including:

1. Improved Atmospheric Monitoring Systems
2. Develop a Nationwide Emergency Communication System
3. Revise MSHA's Approval and Certification Process for Equipment Approval
4. Occupational Exposure to Coal Mine Dust (lowering exposure limits)
5. Collection of Civil Penalties (mandatory mine closures for non-payment)
6. Air Quality Chemical Substances and Respiratory Protection Standards (update personal exposure limits)
7. Surface Haulage (truck, haul road, train and loadout safety)
8. Respirable Crystalline Silica Standard (reducing quartz standard)
9. Requirements for Approval of Flame Resistant Conveyor Belts
10. Confined Spaces (tight quartered work areas)
11. Training and Retraining of Miners (revision of Part 48)
12. Surge and Storage Piles (dozer/feeder safety surface)
13. Escapeways and Refuges

14. Accident Investigation Hearing Procedures (make them public)
15. Verification of Surface Coal Mine Dust Control Plans
16. Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines
17. Modify Conferencing Process (Appeals of Citations)
18. Underground Coal Mining, Self-Contained Self-Rescuer Service Life Approval and Training.

Recording Fatal Accidents

Recently MSHA issued new guidelines for determining what constitutes a mine related fatality. The "Fatal Injury Guideline Matrix" narrows the scope of what the Agency will define as a fatal accident chargeable to the mine operator. This will allow the Agency to report numbers that are artificially low and possibly skew the actual health and safety record of the mine and the industry. In addition, fatals not listed as mine-related will not get the same scrutiny as a chargeable accident. Without the formal investigation process, lessons learned will not be available to prevent similar events in the future.

The Union also disagrees with the Committee established by the Agency to review deaths where chargeability is in question. The Committee is made up of upper-level MSHA employees and not open to other agencies, organizations or the public. This type of structure does not lend itself to a fair unbiased review of the situation.

Implementation of the MINER Act

In the MINER Act, Congress mandated timelines for its implementation. In some cases MSHA has failed to meet these deadlines. The Union urges Congress to allocate adequate funding to MSHA so it can fully implement this Act within the time frames set by Congress.

The *Emergency Mine Evacuation Rule*, which is separate from the MINER Act but ties into the self-contained self-rescuers (SCSRs) requirements, was finalized and made effective December 8, 2006. However, miners working underground today do not have all the protections that the Rule addresses. MSHA deems the operator to be in compliance with the Rule if it has placed an order for additional SCSRs. Although the Rule requires increased availability and storage of SCSRs, there is a backlog of orders for these life-sustaining units. The Union is extremely frustrated that more than a year after the Sago and Alma disasters many miners only have one additional hour of oxygen. In light of this backlog, the Union supports MSHA's approach to make the additional oxygen units equally available to all miners. In reality, it will still take a number of years before miners receive the protections

mandated by Congress. Miners cannot wait for another mine disaster to occur to drive new technology; therefore, the Union strongly urges the development and approval of the next generation SCSR.

Moreover, the finality of this emergency response and evacuation rule is somewhat uncertain as the National Mining Association (NMA) filed a court challenge. The Union is not certain which aspects of the rule NMA is contesting, but it is certain that such legal maneuvers delays the protections Congress mandated only last year.

Congress understood the importance of requiring that mine operators have comprehensive emergency response plans at all their operations. The MINER Act permitted operators a 60 day period to prepare these plans and submit them to the Agency for review and approval. However, many of the mine emergency response plans that operators submitted were grossly inadequate and not worthy of approval. We are now beyond the deadline established by Congress. While we commend MSHA for not approving these faulty plans, we do believe it must be more aggressive and apply more pressure on the operators to get these plans completed. Unless MSHA takes decisive action and resolves all the remaining issues, miners will not get the mine emergency response improvements that Congress intended.

Further, the mine emergency response plans are to be reviewed and re-approved by MSHA every six months. We are already beyond the original plan due date. If those first plans are not yet approved and fully implemented, how can we expect MSHA to handle these semi-annual reviews? Perhaps MSHA needs more manpower to handle this task, but whatever the answer, until every operation has an approved plan in place, miners are not getting the protections Congress intended.

Very little has changed in the last year concerning the ability to communicate with and locate trapped miners. While we have learned more about this technology and understand that much is available, very few operators have taken advantage of it. Communication systems and tracking devices are areas that MSHA must pursue more aggressively. Current communication and tracking technology, including one-way text messaging and two-way wireless systems, some of which are available now, must be immediately installed in all mines. Any system that can increase the ability for miners to escape a mine emergency, even if it is limited in scope, must be utilized. The federal government, through NIOSH and MSHA, must 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 must be required to upgrade existing systems at all its operations.

We are also troubled by MSHA's failure to undertake action to facilitate the creation and training of additional mine rescue teams. 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. While Congress allowed MSHA 18 months in which to prepare, finalize, and give effect to rules that increase and enhance mine rescue team requirements, so far MSHA has not adequately addressed this need. The need is real and it is immediate. In the not-too-distant future MSHA will need additional funding to certify that mine rescue teams are qualified as contemplated by the MINER Act.

Over the past 20 years MSHA and some operators have weakened the intent of the current regulations regarding mine rescue protections. 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. 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.

Collection of Civil Penalties

In the MINER Act, Congress charged MSHA with revising and enhancing its penalty structure. The Agency needs to do a much better job of tracking and collecting the fines it imposes and it should escalate the pressure when an operator refuses to pay a final penalty. 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 is typically 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 grant the Agency such authority. MSHA's top personnel claim that if it had that authority the Agency would exercise it to close operators who refuse to pay their fines. We would welcome that.

MSHA Hotline

The Union has complained for some time that the current hotline system miners use to report hazardous conditions is ineffective. Recently, a member of the UMWA called the 800 number listed on MSHA's website to report a problem at the mine where he worked and was

frustrated by problems he encountered. The individual who answered the call, a contract employee, did not have any knowledge of mining, making it extremely difficult for the miner to convey the message. Further, the individual at the call center was not remotely familiar with MSHA's District structure and was therefore uncertain 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 the mining industry and the Agency. The current practice of contracting this work out to call centers lessens miners' health and safety.

Belt-Air

In keeping with the mandates of Congress in the 1969 Coal Act and the 1977 Mine Act, which strictly prohibits the use of belt-air to ventilate working places, the Union has historically been opposed to the use of belt-air to ventilate the working places. The 2006 Alma disaster is a reminder that there is no safe way to ventilate working sections using belt-air. This mine fire was intensified by air from the belt entry and the contaminated air was dumped onto miners working inby. In addition, conveyor belts used in the mining industry must be made of non-flammable material.

In the MINER Act, Congress directed that there be created a Technical Study Panel to provide independent scientific and engineering review and recommendations with respect to belt air and belt materials. The Study Panel is then to issue a report to the Secretaries of Labor and Health and Human Services, as well as the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and Labor. While this Technical Study Panel has been constituted and has begun meeting, we harbor reservations about its administration. Congress was silent as to its administration, but MSHA staff is providing the support personnel. If its first meetings are any indication, MSHA seems more invested in defending the belt air decisions it has already made than simply servicing the Study Panel. Congress assigned this Study Panel to offer an "independent" review and recommendations and we hope it can overcome MSHA's bias in favor of belt air.

Funding for Additional Programs and Health and Safety Protections

The Union would 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 Facility

- Appalachian Laboratory for Occupational Health and Safety in Morgantown, WV
- Approval and Certification Center
- Personal Dust Monitors (PDM)
- Colorado School of Mines

Conclusion

Although some changes have been made, I am sorry to report that MSHA's efforts over the past year would do little to change matters today if a mine were to experience an explosion like the one at Sago, or a mine fire like the one at Alma; indeed the underground miners would likely fair no better than those who perished over one year ago. Thanks to the MINER Act, we can presume that any incident would be *reported* within the initial 15 minutes. However, there is no reason to expect that a sufficient number of mine rescue teams would be able to respond more quickly. There has been some growth in mine rescue teams over the last year but very little -over all progress, in either expanding the number or improving the proximity of qualified mine rescue teams has taken place across the board. So while that some miners will be better protected, others won't. We still have some in the mining community saying that it can't be done. Because a weakened MSHA had allowed a relaxed policy on mine rescue regulations rather than enforce the mine Act, some small operators who have in the past, relied on State teams rather than employ their own, are still trying to undermine the intent of the Miner Act. It needs to be made clear from this day forward that all mining operations will employee their own mine rescue teams so that all miners are protected as intended by the 2006 Miner act.

For the most part there is nothing in place that allows an operator to be able to locate trapped miners beyond the use of a dispatcher. The ability for a dispatcher to know exactly where the miners are at every moment of his or her shift is impossible. This approved method falls way short of the intent of a tracking device and MSHA needs to re-address the approved Emergency Response Plans to fix this.

Safety chambers are not yet required, nor are safe havens prescribed. Even though Chambers have been approved by some states such as West Virginia, the debate continues. Almost half of the operators do not have a complete approved emergency response plan as required by the MINER Act. Many miners caught in a disaster would likely have one additional hour of oxygen as opposed to early 2006, but please remember that it took more than 40 hours for the first mine rescue teams to reach the miners at Sago.

MSHA still allows mine operators to ventilate working sections with belt-air, and conveyor belts in our underground mines still have the ability to catch fire. The use of belt air was prohibited in the Mine Act . Thirty-eight years later we have a Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining. Seems like all this group needs to do is read what Congress adopted by in 1969 and again 1977. It states under 303(y) (1) " In any coal mine opened after the operative date of this title, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of the air coursed through belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries, and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and **such air shall not be used to ventilate active working places."**

We are most appreciative that Congress has worked towards increasing MSHA's budget so more mine inspectors can inspect mines to ensure compliance with the Mine Act, yet we just recently found out that MSHA is trying to eliminate their secretarial staff and replace them with contractors under the A-76 Budget Competitive Outsourcing Initiative. This would be a huge blow to the support staff of our Nations inspectors further crippling their ability to do their job effectively and efficiently. This could also open the door as a tool to next replace our Inspectors. The use of contractors within MSHA has already been proven to undercut miners protection when the MSHA Hotline, a toll free number used by miners to call in hazardous conditions or complaints, was staffed with contractors. Miners' calls never received the proper attention. Calls went unanswered. Unsafe conditions at the mine went un-addressed, and to this day, miners still continue to have problems with the Hotline call center.

We also need to take the next step in being more proactive in our approach to miners protection. Miners need to have the best tools available, not only from a production standpoint, but better health protections as well.

- 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.
- 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.
- We need to actively pursue improved communication systems. I was made aware this week that wireless technology does exist but hasn't been explored to the extent it should.
- Stronger ventilation controls should be required that are used to separate our fresh air esacpeways that miners have to travel in the event of a mine fire.
- 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.

This would be a good start. If we do these things then maybe we can bring our safety standards up to the 21st century. There are other recommendations we have listed in our Sago report, which has already been made available to you. The report can also be seen on our website at UMWA.org.

We expect MSHA to demonstrate a commitment to enforcing the Mine Act and to improving miners' health and safety so that our industry will never again experience another mine disaster like Sago or Alma. 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. This will greatly improve miners health and safety protections, which is long over due.

Again thank you and I will be happy to answer any questions that you may have.

United Mine Workers of America
8315 Lee Highway
Fairfax, Virginia 22031-2215

Phone (703) 208-7120
Fax (703) 208-7135
E-Mail DiggerUMWA@aol.com
dodell@umwa.org

Dennis Bryan O'Dell

Experience

2005 to current United Mine Workers of America Fairfax, Virginia

Administrator for Occupational Health and Safety

- Responsible for overseeing all UMWA Health and Safety operations for coal and non-coal members in the United States and Canada.

- Chairman representing the UMWA on the Joint Industry Committee between the United Mine Workers Of America and the National Bituminous Coal Operators Association (UMWA/BCOA Health and Safety Committee)
- Chairman on Joint Industry UMWA/BCOA Training Committee.
- Classroom instructor for the training of miners at the National Mine Academy of Beckley and an instructor for the Joint Industry Training classes as provided by the agreement of the National Bituminous Coal wage agreement
- Active member and participate of the Black Lung Association.
- Appointed to the National Institute for Occupational Safety and Health Mine Safety and Health Research Advisory Committee in 2006.
- In accordance with the decision taken by the Governing Body of the International Labour Organization (ILO) at its 288th Session held in November 2003, a Meeting of experts on Safety and Health in Underground Coal Mines was convened in Geneva Switzerland. Eight individuals were appointed respectively from each group made up from Government Representatives, Workers Representatives, and the Employers Representatives. The Countries seated were from, Australia, China, Germany, India, Poland, Russian Federation, South Africa, and the United States. I was nominated to serve as the workers expert from the United States. Our task was to revise the existing code of practice on safety and health in underground coal mines that had originally been written in 1986. In May of 2006 we successfully re-wrote and adopted a new code to enhance and improve coal mine health and safety Internationally.

1995 to 2004 United Mine Workers of America Fairmont, West Virginia

International Health and Safety Representative

Responsible for representing coal and non-coal members in the United States and Canada but primarily in West Virginia, Ohio, Pennsylvania, Maryland, and New York on various health and safety issues. I represented approximately 100,000 plus members, active and retired.

I coordinated and/or conducted coal mine accident investigations. My experience came as an assigned lead investigator for the United Mine Workers of America in the following cases since 1995: Consols Quarto #4 multiple fatality investigation, Consols McElroy fatality investigation, AEP's Meigs Mine fatality investigation, Consols Humphrey Mine fatality (2 cases) investigations, Consols Loveridge Mine Fire Accident investigation, Consols Ireland River load out fatality

investigation, Consols Blacksville #2 prep plant fatality investigation, Ohio Valley Coal Powhaton #6 fatality investigation, Jim Walter Resources Mine # 5 multiple fatality investigation, Consols McElroy Shaft explosion investigation, Consols 2nd Loveridge mine fire investigation with the Australian Mine Rescue GAG jet engine Technology, Consols 84 mine fire investigation, Pin Oak mine fire investigation, ICG Sago Mine Disaster, Aracoma Mine Disaster

I coordinated and participated in all Health Hazard Evaluation investigations conducted by NIOSH within my regional area.

I served on a joint committee consisting of coal and non-coal with Industry, State, and various Labor organizations in the State of Ohio.

I serve as a Diesel Equipment Commissioner from 1997 to 2005 as appointed by West Virginia Governor Cecil E. Underwood and re-appointed by Governors to follow.

I served for the United Mine Workers of America on the UMWA/BCOA (United Mine Workers of America/Bituminous Coal Operators Association) Joint Industry Training Committee.

1993 to 1995 Consolidation Coal Company Robinson Run Mine#95
UMWA 1501 Local Union Representative
Elected by and served as the Local Union's **Vice President**.
Elected by and served as the Local Union's **Chairman of the Health and Safety Committee**.

Education

1969 to 1973 Fairmont Senior High School
Loop Park Drive, Fairmont, West Virginia 26554

- College Preparatory Classes

1973,75,76,77 Fairmont State College
1201 Locust Avenue Fairmont, West Virginia 2655

- Elementary Education 1 thru 9

1974 West Virginia Wesleyan College
59 College Avenue Buckhannon, West Virginia 26201

- Theology

1993, 94, 95, 2001 thru 2007 National Mine Academy
Beckley, West Virginia
Underground and Surface coal mine training consisting of the following classes:
Total hours of training 600

1994 Maritime Institute-Tech & Grdt
5700 N Hammonds Ferry Road Linthium Hgt., Maryland 21090

- Organizing Training 40 hours

1995 Cooksburys College Charleston, West Virginia Seminar

- Youth Disciple Training 20 hours

1977 West Virginia Underground Certification # UG N-1020A
1981 West Virginia Assistant Mine Foreman's Certification # 33185
1985 West Virginia Mine Foreman's Certification # 33185-85
West Virginia Surface Blasters Certification
West Virginia Shot Fireman's Certification
1994 United States Department of Labor, Surface Safety Committee Training 2.5 CEU hours

1994 United States Department of Labor, Underground Safety Committee Training 2.5 C EU hours
1995 United States Department of Labor, Mine Health and Safety Training Seminar 3.2 CEU hours
2002 United States Department of Labor
Instructor – CH, GB, IU, GA, IS
2004 United States Department of Labor, Law Regulation and Policy 2.1 CEU hours