



Statement of  
The National Mining Association  
Before the Subcommittee on  
Workforce Protections  
United States House of Representatives  
on  
The Supplemental Mine Improvement and New Emergency  
Response Act (S-MINER) of 2007 (H. 2768)  
and  
The Miner Health Enhancement Act of 2007 (H. 2769)

July 26, 2007

The National Mining Association (NMA) appreciates the opportunity to share our views on legislation that has been introduced to amend our nation's mine safety laws and the measure that was unanimously adopted by the Senate and overwhelmingly adopted by the House last year, the Mine Improvement and New Emergency Response Act of 2006 (MINER Act).

NMA, as you know, worked toward the passage of the MINER Act and we continue to believe that its core requirements are sound. The MINER Act, which was endorsed by labor and industry prior to its passage little more than one year ago, has already contributed to significant success in improving safety. But much remains to be accomplished by both the Mine Safety and Health Administration (MSHA) and the industry to achieve full implementation.

Since the MINER Act was signed into law on June 15, 2006, MSHA has taken aggressive action to implement its provisions. Industry has invested more than \$250 million thus far complying with the act's mandates. Most importantly, mining operations are on track to return to year-over-year improvements in mining safety. (See below for a list of MINER Act accomplishments to date.)

We believe that diverting attention and resources away from the critical task of fulfilling the mandates of the MINER Act because of the necessity to respond to an additional layer of statutory requirements could ultimately undermine the progress that has been made on miner training and other vital objectives of the act. To impose further legislation before the full impact of the original MINER Act can be comprehensively measured is premature. Consequently we urge that Congress defer consideration of these measures until all parties' -- labor, industry, regulators and members of Congress -- can fairly and independently analyze the MINER Act's impact.

NMA also notes a similar caution shared by prominent mine engineering academics in their July 25, 2007 letter to the chairman and the ranking member of the House Committee on Education and Labor. The 11 academics from leading schools of mine engineering warned against "dramatically disrupting the very core of the industry" with additional provisions at this time.

Accompanying our statement is a critique of a number of provisions of the new legislation that we believe are unnecessary and possibly even counterproductive to our shared mission of improving mining safety. This statement highlights what we believe are some of the major flaws of the bills introduced as well as what is missing from the discussion.

**I. The addition of new regulatory requirements will create confusion and threaten continued progress on implementing the safety improvements required by the MINER Act.**

The S-MINER Act would create new requirements in these already difficult and challenging technology-forcing areas. For example, the bill would shorten deadlines by requiring that hardened “leaky feeder” electronic communications and tracking systems be installed in all underground coal mines within 120 days from the date of enactment. These premature changes threaten the real progress being made. If implemented, these new requirements may lead to the installation of ineffective technology. They also have the potential to strand significant dollars already invested by companies in safety improvements.

## **II. The S-MINER Act circumvents notice and comment rulemaking, thereby preventing the development of sound safety and health standards and policies.**

Notice and comment rulemaking is a precept fundamental to the MINER Act and its predecessor statutes. The basic purpose of such rulemaking is to afford stakeholders the due process required by law by providing a reasoned forum that allows all interested parties to comment on proposed regulations. The process is designed to help governmental agencies such as MSHA collect the best available information so that the final regulations implemented are effective and fair. The S-MINER Act, and its related Miner Health Enhancement Act of 2007 (H.R. 2769), would circumvent this crucial rulemaking process in key areas.

## **III. The S-MINER Act changes the roles and responsibilities of MSHA and NIOSH in a number of key respects. It also introduces into the safety process organizations unfamiliar with the mining industry**

The S-MINER Act would radically change a number of key MSHA and NIOSH responsibilities. In our opinion, this will create regulatory confusion.

The bill would turn this well-understood and effective standard-setting regime on its head by mandating that MSHA simply accept NIOSH recommendations. This would circumvent the current approval and certification process and would also undermine established protocols to ensure that products used in mines are safe.

The bill also contains a provision requiring MSHA to contract with the Chemical Safety and Hazard Investigation Board to conduct “special investigations” of mine accidents. While the Board is knowledgeable and respected, it is unfamiliar with mining. We question whether the Board would have the technical knowledge capable of analyzing the complex hazards that are unique to this Industry.

#### **IV. The S-MINER Act will result in an administrative nightmare for MSHA and the industry.**

The S-MINER Act contains several provisions that are impractical. For example, it requires operators of all mines, both underground and surface, coal and metal/nonmetal, to notify the agency when every violation is abated. This would create an unnecessary burden for mine operators, especially since inspectors are at the mine virtually every day. An effective system to abate violations is already in place. Additionally, it would require all operators to notify MSHA of a number of incidents that are not likely to cause injury or are otherwise not life-threatening. Notifying the agency of near miss incidents or other events that are not clearly defined by the bill will lead to confusion, i.e., "any other emergency or incident that needs to be examined to determine if mines are safe..."

The bill would also require MSHA to randomly select and remove for testing five percent of the SCSR units at all underground coal mines every six months. This provision is ill-conceived. By removing from service SCSR units that are needed by working coal miners, it will exacerbate the existing shortage. Recognizing that the inspection system used in the past was flawed, MSHA recently introduced new quality control procedures to inventory and monitor SCSR units. These new procedures address the flaws and make these legislative requirements unnecessary.

#### **V. The S-MINER Act outlaws the use of belt air to ventilate the face at underground mines. As a result, it would severely diminish safety by prohibiting the use of a procedure critical to the safe operation of a number of underground mines.**

Belt air is critical to the development of underground coal mines in areas of significant overburden. In such deep mines, reducing the number of entries is an important precaution against the likelihood of dangerous roof falls and similar types of ground control events. This precaution, however, places a premium on the use of belt air for ventilating deep mines. It is also critical to ensure that a sufficient amount of air is available to dilute gas and dust.

The MINER Act required MSHA to establish a Technical Study Panel to evaluate the use of belt air and belt flammability standards. The panel is in the final stages of its evaluation, and is on track to deliver its report to the Secretary of Labor by the end of the year, well within the date mandated by the MINER Act. The congressionally mandated panel should be permitted to complete its work and additional requirements related to the use of belt air should not be issued until the panel's report and recommendations are finalized.

## **VI. The additional penalty provisions included in the S-MINER Act are draconian, unnecessary and unfair.**

The S-MINER Act would increase penalties, establish new requirements for “pattern of violations,” and restrict the ability of mine operators to contest inappropriate enforcement actions. These stricter enforcement provisions, which would apply to all mines, are unnecessary and will not contribute to improved health and safety.

Contrary to the picture painted by the S-MINER Act, injury trends continue to improve. For example, within the coal industry the Total Reportable Incident rate over the past 10 years has improved by 45 percent (7.90 to 4.37).

## **VII. The S-MINER Act’s one-size-fits-all approach fails to recognize that mines are unique. If enacted, this bill will result in many mines installing inappropriate or unnecessary technology.**

The S-MINER Act is prescriptive, as opposed to being risk-based, in design. It would mandate the use of technologies that may not be appropriate for all underground mines. Mine operators should not be required to introduce technology that is neither proven to be safe nor yet commercially available.

The independent Technology and Training Commission, whose work is referenced in the summary documents that accompanied introduction of S-MINER Act, identified “systematic and comprehensive risk management as the foundation from which all life-safety efforts emanate.” The prescriptive nature of the bill ignores this independent recommendation and would confine MSHA and the industry to continuation of a one-size-fits-all approach.

## **VIII. The Missing Pieces**

**Just as the S-MINER Act is burdened by the addition of premature requirements, it is weakened by the absence of provisions that could make significant contributions to mine safety.**

### **Substance Abuse Testing**

Neither the supplemental MINER Act nor the Miner Health Enhancement Act deal with the problem of substance abuse in our nation’s mines. This glaring omission must be addressed if we are truly concerned about improving safety. While some companies, depending upon the jurisdiction within which they operate, can implement random drug and alcohol testing, this cannot be applied universally. Unfortunately, the absence of mandatory, random drug and alcohol testing creates an unacceptably permissive environment in which impaired individuals are free to endanger co-workers at facilities where random testing is prohibited by jurisdictional or company policy. This practice cannot be permitted to continue.

All miners deserve to know that they are working in an environment where they need not concern themselves with safety consequences arising from another employee being impaired due to substance abuse. Last year we promoted, during consideration of the MINER Act, inclusion of language providing authority for mandatory, random drug testing throughout the industry. Unfortunately, this sensible precaution was opposed by some in the Senate and was not included in the bill that came before the House.

Recognition of this problem is long-overdue and we ask that if a bill emerges from this Committee it include authority for operators to institute mandatory, random drug and alcohol testing programs to safeguard their employees.

### **Mandatory Health Surveillance**

Section 7 of the S-MINER Act addresses what some believe is necessary to bring about further reductions in the percentage of coal miners developing coal workers pneumoconiosis (CWP) or black lung disease. We, like you, support efforts to eradicate CWP but believe the objective of the bill's authors will never be achieved so long as the x-ray surveillance program under Section 203(a) of the act remains voluntary.

Recently, the National Institute of Occupational Safety and Health (NIOSH) reported on cases characterized as "rapid progression" CWP. The results of the NIOSH study are of concern to all of us and while we need to better understand the scientific basis for these determinations, one fact is glaringly obvious – participation in a mandatory x-ray surveillance program might have prevented progression of the disease in some of these cases.

Since its inception, 30-40 percent of those eligible to participate in the NIOSH surveillance program have voluntarily elected to do so. Just as operators must do a better job ensuring that dust controls are in place and are maintained, so too must we recognize the role of surveillance in an overall prevention strategy.

Eliminating black lung will not occur so long as the x-ray surveillance program remains voluntary. If a bill emerges from this committee it must make participation in the program mandatory.

### **Inspection Activity & Resource Allocation Decisions**

Under the Mine Act, MSHA is required to inspect every underground mine four times per year and every surface mine twice per year. Contrary to congressional expectations, these inspections do not consist of semi-annual or quarterly visits of a few days' duration. Rather, they can, and oftentimes do, mean a continual presence at the mine throughout the year. MSHA's statistics show that a large underground coal mine can have as many as 3,000-4,000 on-site inspection hours a year.

Moreover, in addition the agency also conducts thousands of what it calls "spot" inspections aimed at measuring compliance with standards governing specific conditions or practices.

Under MSHA's regulations mine operators must report immediately all accidents and report on a quarterly basis all lost time injuries and reportable illnesses directly to the agency. This has resulted in the developed of an extraordinary database that ought to be used to guide inspection activity and allocate inspection resources. It is far more likely that inspection activity based on documented need and analysis will be more effective than inspection decisions based on entirely subjective or ambiguous criteria or on rote compliance with mandates of the Act. MSHA must be authorized to utilize the information available, all of which it compiles and maintains, to identify problem areas and allocate its inspectorate accordingly.

Working together we believe a system can and must be developed that would establish a mechanism to reduce the number and scope of inspections based on performance and the adoption of verified and objectively administered performance goals.

## **Conclusion**

Today mine safety and health professionals face challenges far different from those anticipated when our nation's mine safety laws were first enacted. Difficult geological conditions, faster mining cycles and changes in the way work is conducted introduce potential complications whose solution requires new and innovative responses. Today's challenge is to analyze why accidents are occurring at a mine, then use that analysis as a basis for designing programs or techniques to manage the accident-promoting condition or cause.

Regrettably, the bills before the committee will not accomplish our shared goal. Rather, their intention is to try to force improvement through the imposition of punitive measures that bear little understanding of the complexities of today's mining environment. Eliminating stakeholder participation in the regulatory process will not improve safety, applying one-size-fits all requirements will not improve safety nor will imposing artificial deadlines that ignore the need to develop technology and assure its safe use.

We stand ready to work with the members of the committee to analyze what further statutory amendments are warranted once operators have been afforded the opportunity to fully implement the requirements of the MINER Act. To do otherwise is premature, unnecessary and unwarranted.

## **MINER Act Accomplishments**

The following is a list of industry accomplishments achieved to date under the MINER Act and voluntarily:

- 86,000 new self-contained self-rescuers (SCSR) have been placed into service in the last 12 months and more than 100,000 will be added in the coming months.
- All 55,000 underground coal miners have and will continue to receive quarterly training on the donning and use of SCSRs.
- With the recent approval of expectation training units, all miners will begin to receive annual training with units that imitate the resistance and heat generation of actual models.
- Mines have installed lifelines in both their primary and secondary escape-ways and emergency tethers have been provided to permit escaping miners to link together.
- Underground coal mines have implemented systems to track miners while underground; underground coal mines have also installed redundant communication systems, and new systems to provide post-accident communication continue to be tested.
- All 550 underground coal mines have submitted plans to provide post-accident breathable air to sustain miners that are unable to escape and await rescue.

- Thirty-six new mine rescue teams have been added or are in the planning stages, even before MSHA initiates the rulemaking required by the act.
- These steps and others taken beyond the requirements of the MINER Act have resulted in a safety investment of approximately \$250 million for NMA member companies alone.
- Even before the enactment of the MINER Act, NMA and its members engaged the National Institute for Occupational Safety and Health (NIOSH) and Mine Safety and Health Administration (MSHA) in a mine emergency communications partnership.
- NMA members have volunteered their mines for testing tracking and communications systems. Some of these technologies hold great promise; however they are some years away from readiness for mine application.