

TESTIMONY OF TONY OPPEGARD
THE U.S. HOUSE COMMITTEE ON EDUCATION & LABOR
Hearing on “Protecting the Health and Safety of America’s Mine Workers”

March 28, 2007

_ Thank you to committee for invitation & to Chairman Miller for his commitment to protecting the safety of America’s miners; champion of the coal miner in the U.S. Congress - compare to Sen. Paul Wellstone

_ Acknowledge UMWA & President Cecil Roberts, who has dedicated his life to making the mines safer for all miners, union & non-union

_ Appearing on behalf of Appalachian Citizens Law Center of Prestonsburg, KY; non-profit law office which represents coal miners in safety-related matters

_ My background: 27 years working for coal mine safety, particularly o/b/o miners in the non-union mines of eastern KY (not a single union mine - average mining height of 40-48 inches)

- 18 years litigating safety discrimination cases under section 105c - miners fired for refusing unsafe work (only attorney in the nation so specializing)

- 2 ½ years for MSHA in D.C. - advisor to Davitt McAteer

- 4+ years as mine safety prosecutor for Commonwealth of KY; appointed by Gov. Paul Patton

- 2 years private practice, specializing in mine safety litigation; lobbying work for ACLC

_ KY General Assembly recently passed HB 207, which the ACLC and the UMWA helped draft and lobbied for - signed last week by Gov. Fletcher

- Common sense safety provisions stemming from specific KY mining accidents

* **STILLHOUSE MINING** - 8/3/05 - Harlan County - Russell Cole and Brandon Wilder killed during retreat mining operations (removing pillars holding up the mine roof); investigation showed none of miners trained in pillar removal plan

✓ HB 207 requires 48-hour notice to state enforcement agency before retreat mining operations begin/resume; state must ensure miners trained on pillar plan - should require inspector to observe retreat mining operations

* **H & D MINING** - 12/30/05 - Harlan County - Bud Morris bled to death when legs severed after being run over by a ram car overloaded with coal; mine emergency technician did not treat him underground or outside

✓ HB 207 requires two METs on each coal-producing shift, one of whom must be underground at all times

* **KENTUCKY DARBY** - 5/20/06 - Harlan County - Jimmy Lee and Amon Brock killed in methane explosion at improperly constructed seal; Roy Middleton, Bill Petra & Paris Thomas died of carbon monoxide poisoning

✓ HB 207 requires operator to provide methane detectors to all outby miners and to any group of two or more miners working together on the section; typically, only the foreman has CH₄ detector; will give miners means to protect themselves if foreman not making his gas checks

✓ law should have required mine operator to provide CH₄ detector for every miner underground - opposed by coal industry lobbyists

✓ law should have required mine operator to certify that mine seals built in accordance with seal construction plan - provision deleted entirely when bitterly opposed by industry

* **HENDRICKSON EQUIPMENT** - 7/18/06 - Knott County - Jason Mosley, a high wall drill operator, killed when portion of high wall collapsed on his cab

✓ HB 207 requires pre-shift examinations for hazardous conditions at

surface mines (not required in federal law)

✓ HB 207 requires recorded pre-operational checks of all equipment (exceeds requirements of federal law)

_ HB 207 gives the state enforcement agency subpoena power to investigate allegations of unsafe working conditions even if no accident or injury has occurred (in a glaring weakness of the FMSHAct of 1977, MSHA does not even have subpoena power to investigate a mine disaster or any accident unless it convenes a public hearing; therefore, witnesses are asked to attend interviews, then are told they can refuse to answer any question & can terminate the interview at any time)

_ HB 207 mandates 6 inspections per year of all underground coal mines, 2 of which must include electrical inspections; last year at this time, KY only mandated 2 underground inspections per year and no electrical inspections; was increased to 3 in the 2006 session of the General Assembly

TWO FINAL POINTS –

_ Most important mine safety provision that Congress could enact is requiring six inspections per year of all underground coal mines; if you do nothing else, require bi-monthly inspections of the mines; would substantially reduce the number of fatal and serious non-fatal accidents; stuck on four inspections since 1977 & that is not working (47 coal mine deaths last year, 16 in Kentucky)

_ With all due respect to Bruce Watzman and other high-paid industry lobbyists, disregard their decades-old mantra that most accidents are caused by the carelessness of coal miners and that what we therefore need is behavior modification programs for coal miners; what we need is behavior modification for mine operators sparked by increased mine inspections and strict enforcement of the Mine Act, not the Bush Administration's fairy-tale emphasis on "compliance assistance" (i.e., asking operators, whom the Administration refers to as its "stakeholders", to please comply with the law)

_ Will submit more detailed comments in writing