

**STATEMENT OF RICHARD E. STICKLER
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BEFORE THE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
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Chairman Miller, Ranking Member McKeon, and the Members of the Committee, I am pleased to appear before you today to discuss the actions the Mine Safety and Health Administration (MSHA) is taking to protect the health and safety of our nation's miners. I would also like to provide you a report on the significant progress MSHA is making in implementing the Mine Improvement and New Emergency Response (MINER) Act of 2006, signed by the President on June 15, 2006.

I have been involved in the coal mining industry for more than 40 years. My experience includes working shifts in underground coal mines as well as working in and around the mine site and mining community every day. I know firsthand that every fatality, injury, and illness is devastating for miners, their families, and the communities they live in.

Accident Investigations

In March and April, MSHA released the results of its investigations of the Aracoma Alma No. 1 and Darby mining accidents of last year. MSHA released the results of the Sago investigation last week. The internal MSHA reports evaluating MSHA's activities surrounding the Aracoma, Darby, and Sago disasters will be released over the next month. In these reports, MSHA will review its policies and practices and develop action plans to address identified shortcomings.

MSHA Actions to Improve Mine Safety

Following the tragedy at Sago Mine, MSHA has taken swift action to provide new regulatory protections for miners at the same time that it has increased its enforcement efforts. For example, MSHA issued an emergency temporary standard on March 9, 2006, addressing many of the safety provisions that were ultimately included in the MINER Act, such as increasing the number of Self-Contained Self-Rescuers (SCSRs) in underground coal mines, additional safety training for underground coal miners, and immediate notification of mine accidents applicable to all mines.

In 2006, MSHA also stepped up its enforcement actions in both coal and metal and non-metal mines, issuing 77,129 citations and orders in coal mines, up nearly 12 percent from 69,124 in 2005. MSHA also increased the number of citations issued in metal and non-metal mines to 62,937, up nearly 7 percent from 59,101 the year earlier. Proposed assessments issued by MSHA in 2006 totaled \$35 million, up 40 percent from \$25 million in 2005.

When the MINER Act became law, even before the publication of the new civil penalty regulation, MSHA began enforcing new civil penalties for flagrant violations, unwarrantable

failures, and failure to immediately notify MSHA of mine accidents. MSHA has already issued the first ever citations for flagrant violations. Six of these, totaling \$874,500, were assessed against R&D Coal Company for the October 23, 2006 death of one of its employees. A flagrant violation is defined in the MINER Act as "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory safety and health standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury." MSHA will continue to use this important enforcement tool to bring about future compliance.

MSHA also initiates special emphasis inspection programs that focus special enforcement activities on specific aspects of mining. For example, this past February and March, MSHA initiated special emphasis inspection programs in Coal Districts 4 in Southern West Virginia and District 6 in Eastern Kentucky to examine roof controls plans and roof support methods in mines that use retreat mining methods. In District 4, MSHA issued 234 citations and orders during a two-week period.

District 6 conducted a special initiative which targeted all mines in the district that are conducting or will conduct retreat mining. The purpose was to observe retreat mining practices and to ensure that adequate safety precautions for retreat mining were included in each mine's roof control plan. Between March 5 and 22, 2007, MSHA inspectors inspected 33 mines and issued 8 citations related specifically to roof control issues. Of the 33 mines involved in the initiative, 21 were verified to have adequate safety precautions for retreat mining, and 12 were required to provide additional safety precautions.

In February, MSHA also conducted a nationwide targeted Special Health Emphasis enforcement program to ensure operator compliance with the applicable respirable dust standard at specific mines during normal production cycles, and that ventilation and dust control parameters were adequate and effective in protecting miners' health at all times. Over 1,130 dust samples were collected from February 20th to March 3rd, 2007 at 61 selected underground coal mines in all eleven coal districts. Thirty-two citations and one unwarrantable failure order for ventilation plan violations were issued during the health inspections, two citations were issued for excessive dust, and 44% of the enforcement actions were designated as Significant & Substantial (S&S). Further evaluation will be conducted to identify good and bad ventilation plans and practices.

Implementing the MINER Act of 2006 and Initiating New Policies

Last year, Congress passed and the President signed the MINER Act - the most significant mine safety legislation in nearly 30 years. The provisions of the MINER Act that have been implemented by MSHA include:

- The approval or partial approval of emergency response plans for the 466 currently active underground coal mines;
- Requiring more Self-Contained Self-Rescue (SCSR) devices for each miner in every underground coal mine;

- Requiring flame resistant life lines for evacuation in all underground coal mines;
- Mandating additional mine evacuation safety training and training on the use of SCSRs;
- Implementing a new maximum civil penalty of up to \$220,000 for flagrant violations, and new minimum penalties for “unwarrantable failure” and “immediate notification” violations.
- Requiring all mine operators to notify MSHA immediately after an accident;
- Installing redundant underground-to-surface communications systems;
- Requiring a supply of breathable air to miners who are trapped in underground coal mines;
- Training 14 MSHA officials to be Family Liaisons;
- Requiring post accident tracking of underground miners and;
- Requiring realistic “expectations” training for miners who use SCSRs.

Keeping miners safe and healthy is MSHA’s top priority. Implementation of the MINER Act is critical to achieving this goal, and I am proud of MSHA’s work in this regard. I want to review with the Committee in detail the objectives of the MINER Act that MSHA has already met.

Emergency Mine Evacuation

On December 8, 2006, the Department of Labor published its final rule on Emergency Mine Evacuation in the *Federal Register*. The final rule helps ensure that miners, mine operators, and MSHA will be able to respond quickly and effectively in the event of an emergency. The rule includes requirements for mine operators to provide increased capability for mine emergency response and evacuation; includes additional requirements for SCSRs and their storage; improved training and escape drills; lifelines, tethers, and multi-gas detectors; and accident notification. This final rule includes many provisions that MSHA initially included in the Emergency Temporary Standard issued March 9, 2006, and were later incorporated in the MINER Act. The provisions include:

- Increased numbers and storage of SCSRs;
- Improved mine emergency evacuation drills and training;
- Installation and maintenance of directional lifelines in underground coal mines, which must be fire resistant within three years; and
- Immediate accident notification for all mines.

Once again, MSHA went beyond the requirements of the MINER Act by requiring mine operators to provide multi-gas detectors to miners working alone and to each group of miners. While this provision was not part of the MINER Act, MSHA believes it is important to highlight the addition of this requirement in our final emergency mine evacuation standard because, in the event of a mine emergency, it will enable miners to know whether there are toxic gases in the mine atmosphere.

This rule was effective immediately on December 8, 2006, with the exception of certain training and equipment provisions. All provisions are now effective; SCSR training units for annual expectations training have now been developed. On March, 30 MSHA published a notice in the *Federal Register* notifying mine operators that the units were available. Mine operators must have had a purchase order for these training units by April 30 and must conduct training with them within 60 days of receipt of the units.

MSHA has also developed an SCSR database to enable the agency to locate SCSRs affected by future recalls or other approval actions, and to help our enforcement personnel inspect the SCSRs at the mines by cross checking reported inventories with units in use. In addition, NIOSH and MSHA will use this database to randomly select and collect SCSRs deployed at mines for testing in the Long Term Field Evaluation Program.

Emergency Response Plans

The MINER Act requires underground coal mine operators to develop and adopt written Emergency Response Plans (ERPs) specific to the mines they operate. In accordance with the MINER Act, MSHA required operators to submit plans by August 14, 2006. MSHA provided operators with guidance related to the requirements for breathable air on February 8, 2007. This meant that ERPs could only be partially approved. Revised ERPs, indicating how breathable air will be provided, were required by March 12, 2007. In addition to breathable air, the ERPs must address post-accident communications and tracking, lifelines, training, and local coordination.

We are ensuring that the plans are reviewed in a timely manner, approved, and implemented for all underground coal mines as specified in the Act. As of May 8, 2007, there were 466 active underground coal mines. Of those, 261 have submitted ERPs that have been partially approved, and another 205 have been fully approved. MSHA is reviewing and discussing plan submissions with operators with the goal of providing full approval of all submitted plans in the near future.

Post-Accident Breathable Air

With respect to post-accident breathable air, MSHA issued a Program Information Bulletin (PIB) on February 8, 2007, to provide guidance to mine operators concerning acceptable quantities and delivery methods in underground coal mines. This PIB was placed on MSHA's Web site and was distributed widely to the coal mining community.

The PIB provides the following options for meeting the breathable air requirements of the MINER Act:

- Establish boreholes within 2,000 feet of the working section; or
- Provide forty-eight hours of breathable air located within 2,000 feet of the working section of the mine, with contingency arrangements to drill boreholes if miners are not rescued within 48 hours; or
- Provide ninety-six hours of breathable air located within 2,000 feet of the working section; or
- Provide other options that provide equivalent protection based on unique conditions at a mine.

Methods of providing breathable air (in barricaded or other areas that isolate miners from contaminated air) include:

- Drilling boreholes;

- Air line supplied by surface positive pressure blowers; or
- Compressed air cylinders, oxygen cylinders, or chemical oxygen generators; and
- Other means that provide 96 hours of breathable air.

In addition to the PIB, we have also posted related materials on MSHA's website, including a hazard awareness information sheet on use of compressed air and compressed oxygen; information sheets on methods of providing breathable air, including calculations; and questions and answers addressing specific breathable air issues.

Post-Accident Communications and Post-Accident Tracking

Section 2 of the MINER Act requires that each mine evacuation plan provide a redundant means of communications with the surface for persons underground. It also requires that the plan provide a means of tracking the pre-accident location of all underground miners. The MINER Act requires that mine operators adopt wireless communications and electronic tracking systems by June 2009.

To comply with the requirements of Section 2, as of May 2, 2007, MSHA has met with representatives of 49 communication and tracking system companies, and observed the testing or demonstration of 20 post-accident communications and tracking systems at various mine sites around the country. When these systems are presented to MSHA for approval, we will expedite the approval process to ensure that safe, durable and reliable systems get into the mines as quickly as possible. To date, MSHA has approved 19 systems, including four new devices. These new devices are:

- The Kenwood portable hand held radio;
- Marco RFID (radio frequency identification) Tracking Tag;
- Matrix Design Group RFID Tracking Tag; and
- NL Technologies Model Standalone WiFi Tracking Tag

In order to meet the long range communications and tracking requirements of the MINER Act, MSHA is reviewing all the available technology and working with the National Institute for Occupational Safety and Health (NIOSH) and manufacturers to help in the development of safe, reliable systems for underground coal mines. MSHA's responsibilities are to ensure these devices do not present an explosion or fire hazard in the mining environment, and also verify that they will function underground, while NIOSH is responsible for researching and developing these devices. MSHA has had contact with 137 parties about systems to track and/or communicate with miners while they are underground. However, as of today, there is no truly wireless tracking or communications system that meets the requirements of the MINER Act.

Mine Rescue Teams

The MINER Act requires the Department of Labor to issue regulations with regard to mine rescue teams by December 2007. These regulations must address improved training, certification, availability, and composition requirements for underground coal mine rescue teams. MSHA is currently drafting a proposed rule to implement the MINER Act provisions for mine rescue teams.

Civil Penalties

After passage of the MINER Act, MSHA promptly increased penalties for immediate accident notification and unwarrantable failure violations. On March 22, 2007, MSHA published a final rule to increase civil penalty amounts for mine safety and health violations; the rule became effective on April 23, 2007. Issuance of this rule fulfills another requirement of the MINER Act and demonstrates the commitment of MSHA to protect the safety and health of our nation's miners.

As prescribed by the Act, the final rule:

- Establishes a maximum penalty of \$220,000 for “flagrant” violations, as proposed in the President’s previous budgets.
- Sets minimum penalty amounts of \$2,000 and \$4,000 for “unwarrantable failure citations and orders.”
- Imposes a minimum penalty of \$5,000 (up to a maximum of \$60,000) for failure to timely notify MSHA of a death or an injury or entrapment with a reasonable potential to cause death.

Other major provisions of the final rule applicable to all mine operators and contractors are:

- Increases civil penalties overall – by an estimated *179 percent* using 2005 violation data – targeting the most serious safety and health violations with escalating penalties.
- Adds a new provision to increase penalties – notwithstanding the severity – for operators who *repeatedly* violate MSHA standards.
- Replaces the \$60 single penalty with higher formula assessments for non-significant and substantial (non-S&S) violations.

Family Liaison Program

The MSHA Family Liaison Policy has been put into place to provide for an MSHA liaison to be with families at the site of a mine accident where miners are unaccounted for or there are multiple fatalities. A Program Policy Letter has been issued and 14 designated family liaison personnel have completed their initial training sessions. The National Transportation Safety Board and the American Red Cross have helped train these individuals. Three MSHA family liaisons were present in Barton, Maryland, to be with the families of the miners during the recent accident at Tri-Star Mining Company.

Sealing of Abandoned Areas in Underground Coal Mines

The MINER Act requires MSHA to issue mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines. The MINER Act requires the health and safety standards to “provide for an increase in the 20 psi standard currently set forth in section 75.335(a)(2) of title 30, Code of Federal Regulations.”

As an interim step, last year MSHA issued a temporary moratorium on new construction of alternative seals and then raised the psi standard for existing and new alternative seals by 150% from 20 to 50 psi. MSHA also issued guidance on the design and evaluation of new seals and the inspection of existing seals.

MSHA is currently drafting an emergency temporary standard which addresses improved seal strength, design, construction, repair and sampling of the atmosphere behind seals.

Technical Study Panel on Belt Air

Section 11 of the MINER Act required MSHA to establish a Technical Study Panel on Belt Air. The purpose of this Panel is to “provide independent scientific and engineering review and recommendations with respect to the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining.” Congress provided the Panel one year from the Panel’s appointment to issue its report, and the Secretary of Labor is given an additional 180 days to respond to the Panel’s report.

The charter governing the Panel was published in the *Federal Register* on December 22, 2006. The first two meetings of the Technical Study Panel have already taken place – the first on January 9-10, 2007 and the other on March 28-30 in Pittsburgh, Pennsylvania. The third meeting is being held now in Salt Lake City, Utah, and a fourth is scheduled for June 20-22 in Birmingham, Alabama. Members of the Panel are prominent and experienced mine safety and health professionals. As mandated in the MINER Act, two of the Panel members were appointed by the Department of Health and Human Services, two by the Department of Labor, and two members were appointed by Congress.

Refuge Alternatives

NIOSH is conducting research and field tests on refuge alternatives. By the end of this year, NIOSH is scheduled to report the results of the research to the Department of Labor. By mid-2008, in accordance with the MINER Act, the Department of Labor will report to Congress on the actions MSHA will take in response to the NIOSH report. MSHA is aware of requirements by some states for refuge chambers, and MSHA is accepting state approved refuge chambers as a means of providing breathable air.

Recruitment

The Emergency Supplemental Appropriations Act of 2006 (P.L.109-234) provided an additional \$25.6 million for MSHA for coal enforcement, including the hiring of coal mine inspectors and

other enforcement personnel. MSHA is pressing ahead with recruitment, training and deployment of the additional 170 coal mine enforcement personnel funded by the emergency supplemental appropriation. Through the first three quarters of MSHA's hiring plan, 126 new enforcement personnel staff has been hired. While MSHA faces significant challenges to both replace the enforcement personnel who will likely retire this year and expand our enforcement ranks, I am confident that the agency will meet its goal of hiring 170 net new personnel. The President's FY 2008 budget request includes \$16.6 million to maintain these enforcement staff.

MSHA continues to conduct recruitment drives in local communities around the country, and we have hired additional staff at our Mine Health and Safety Academy to ensure that we can properly and expeditiously train our new inspectors and get them out to the job sites where they will make a difference. I believe this training is the best, most effective program MSHA has ever had and will enable these new inspectors to meet today's challenges. In the end, I strongly believe the increased presence of MSHA enforcement staff at the job sites will have a positive impact on mine safety and health.

Current Enforcement Activities

MSHA will use all of the tools available to achieve our goal of safer and healthier mines, including tough enforcement, education and training, and technology. MSHA will be particularly aggressive with those mine operators who habitually violate MSHA standards and seem to view penalties as just another cost of doing business. In order to better identify these persistent repeat violators, MSHA is developing a database to provide for a more objective analysis of accident trends and enforcement results. MSHA will use the data developed from this database to target those operators who refuse to follow the laws and regulations governing mine safety and health.

One particular tool- pattern of violations- has been in MSHA's arsenal for over 30 years but the agency has never used it. The Mine Act authorizes MSHA to issue a withdrawal order under certain conditions disclosed by an inspection conducted within 90 days after a notice that the mine operator has a pattern of violations of mandatory standards that could have significantly and substantially contributed to mine hazards. MSHA has a regulation that provides for a letter warning mine operators that they have a potential pattern of violations before the statutory notice is issued. While MSHA has issued such letters, it has never proceeded to issue the statutory notice. MSHA has recently initiated the development of objective criteria to identify mines that may have a pattern of violations. Once this new criteria is in place, MSHA will issue pattern of violations notices and orders where warranted. This measure is tough, but I believe it is also necessary in instances where the safety of miners is routinely jeopardized.

MSHA will also continue to conduct focused inspections on known hazards, such as the program we recently completed on retreat mining. In addition to implementing the MINER Act, MSHA will continue to inspect each underground mine four times annually, and each surface mine twice a year, as required by statute.

Conclusion

MSHA continues to move forward to both implement the MINER Act and to enforce the provisions of the Mine Act. Over the past 14 months, MSHA has issued --

- An Emergency Temporary Standard to improve mine safety;
- Two major regulations to implement the MINER Act;
- A Program Information Bulletin on breathable air;
- A Program Information Letter on flagrant violations; and
- Another Program Information Bulletin on seals.

These actions have been taken to implement provisions of the MINER Act. In addition, two major rules to implement the MINER Act are in various stages of the regulatory process and should be in final form by the end of 2007 as mandated by Congress.

Today, every single person at MSHA remains focused on our core mission: to improve the safety and health of America's miners and to work toward the day when every miner goes home safe and healthy to family and friends, after every shift of every day. MSHA cannot do this alone. The entire mining community – mine operators and miners included – must also do their part to improve mine health and safety. Together MSHA, mine operators and miners can achieve this important goal.

Thank you for allowing me to testify today. I look forward to answering your questions and to working with this committee to continue to improve mine safety.