

**Testimony of**

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**Before the Committee on Education and Labor  
of the United States House of Representatives**

**Hearing on Protecting the Health and Safety of America's Mine Workers**

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Good Morning. Mr. Chairman, Members of the Committee:

Thank you for the invitation to participate in today's hearing and for your ongoing attention to the important topic of "Protecting the Health and Safety of America's Mine Workers".

I am pleased to appear before you today to report on some of the progress that has been made in my native state of West Virginia and what I believe are some of the remaining challenges to the progress of implementing miner protections that were outlined last year.

Initially, allow me to offer a little bit of background on myself. I have been involved since 1994 in miner training with the West Virginia University's Mining Extension Service. In mid - February 2006, I was asked by Governor Joe Manchin of West Virginia to become the Acting Director of the West Virginia Office of Miners Health Safety and Training. I accepted this position as a way to try and improve miners' safety by working to construct meaningful reform to miners' safety and health after the passage of West Virginia Senate Bill 247 in 2006 which required a number of measures intended to improve post incident miners safety and served until September 21, 2006. I am currently the chairman of the West Virginia Mine Safety Technology Task Force which was formed in late February of 2006.

Most of the requirements set forth on the state level through SB 247 are currently being implemented consistent with state compliance schedules. For instance, plans for emergency shelters are due April 15<sup>th</sup> and plans for emergency communications and miner tracking devices are due July 31<sup>st</sup> of this year. Although more effective, through-the-earth communication systems are still in the design stage with limited depth penetration being demonstrated, West Virginia has elected to move forward with existing technologies and components designed to provide enhanced communications during an emergency event.

Communications and safety experts agree that underground coal mines present unique challenges to radio and wire signal propagation. Local geology, mining conditions, and mine layout and design collectively serve to hinder the development of a universal system suitable for all mining operations.

The Mine Safety Technology Task Force is comprised of three representatives selected by the United Mine Workers of America, three representatives selected by the West Virginia Coal Association, a technical advisor and chaired by the Director (I am currently serving as his designee). The purpose of the Mine Safety Technology Task Force was to determine the commercial availability, functional and operational capabilities of self contained self rescuers (SCSRs), emergency chambers/shelters, wireless communication devices and tracking devices. The Task Force also considered issues related to implementation, compliance and enforcement of the emergency rules further defining West Virginia Senate Bill 247.

In my opinion, this group was able to lay the groundwork for significant, workable improvements in placing SCSR caches, emergency chambers, mine lifelines, wireless communication and tracking devices. The resulting report from the Mine Safety Technology Task Force and the finalized rules, recently approved by the West Virginia Legislature, are attached as Attachment 1 and Attachment 2 respectively. These documents, in my opinion, provide the blueprint for enhancing an individual miner's ability to survive after an explosion based on a thorough review of existing technology and study of past explosions coupled with years of practical mining experience by its members. It also contains a great deal of information on the various mine safety technologies, their limitations and use.

During the various Task Force meetings with technology vendors, it became apparent that the technology to accomplish what everyone wanted either did not exist, or needed modification to address important factors. The approach taken in West Virginia was to define standards that were critical for the survival of a miner in a post accident situation based on the review of existing technology and focusing on a systems approach rather than a singular device. One example of this was the 95 degree Fahrenheit apparent temperature requirement set for emergency chambers.

The apparent temperature takes into account the effect of humidity. The 95 degree value of apparent temperature is the point at which the human body begins to be exposed to the danger of having a heat stroke. It made no sense for a surviving miner to enter a potential life saving device and then only suffer a heat stroke. Similar standards for construction of emergency chambers were also developed and included in the Task Force report and publicized in rule form on June 9, 2006.

Since that time, various existing manufacturers of emergency chambers have made significant modifications to their chamber design and construction based on suggestions from the Task Force, engineering studies, simulations, and in some cases physical testing. These manufacturers' products went through a review by a licensed professional engineer from West Virginia and then went through a separate review by Miners' Health Safety and Training personnel in addition to two other engineering professors from West Virginia University. This second review process was observed by MSHA and NIOSH personnel.

Earlier this month, a total of five chamber manufacturers products with varying capacity models were approved by the State (one subject to confirmation of MSHA approval of a battery powered scrubbing system or substitution of a non-electrical system). Some mine operators have already ordered these units prior to the planned April 15<sup>th</sup> due date for submittal of their chamber plans. Similarly, plans to comply with the "breathable air" requirements of Section Two of the "MINER Act", which could include shelters /chambers, were filed with the Mine Safety and Health Administration (MSHA) on March 12<sup>th</sup>. In my opinion, this 10 month turn around time for technology development is exceptional. What remains unknown is whether the chambers approved for use in West Virginia will meet MSHA's requirements when they are promulgated later this year or early next year. In order for the miner protections designed and being implemented by

the State of West Virginia, to proceed as quickly as possible there must be cohesiveness and commonality in large part with the federal requirements being implemented after significant state requirements.

The State of West Virginia is estimating that there will be approximately 322 chambers needed in the state of West Virginia. The Director has informed me that he has been told by the shelter manufacturers that they are estimating that the chambers required for West Virginia will be delivered within a year. I believe based on information reviewed by the Mine Safety Technology Task Force, that the chamber market will quickly become segregated into two or three manufacturers, based on factors such as ease of being moved, height requirements, simplicity of use, and other design factors. There may be delays due to the availability of internal components such as regulators, air cylinders, etc. This in combination with what will happen based upon MSHA's requirements or those in other states that require chambers or "safe rooms" will affect commercial availability as demand increases.

Estimates for start up time for chamber manufacturers have varied from a range of 6 to 10 weeks to 10 to 20 weeks to build the first few chambers. Production estimates have also varied considerably from a range of 1 to 2 units per week to 10 to 20 units per week due to plans for outsourcing construction of the unit. Several of the chamber manufacturers are estimating delivery times of 6 to 8 weeks for internal components mentioned previously.

The West Virginia Mine Safety Technology Task Force is planning to meet with representatives from both MSHA and NIOSH to explain its rationale in developing the requirements enacted last year and also try and see what new regulations are being looked at by the entities to develop strategies for implementation in West Virginia and determine technology issues that we should be addressing that they are not. A sub-group of the Task Force is meeting with NIOSH this Friday.

Last year, the state of West Virginia issued a requirement for all mine operators to report the results of their 90-day SCSR inspections. The first reporting period ended July 31 with reports due no later than August 15, 2006. The resulting report is attached as Attachment 3. Of note, the report indicates that a total of 10,291 SCSRs were reported in this first cycle. Analysis for the second reporting period is near completion, but WV Office of Miners Health Safety and Training personnel estimate (data is still be entered) a total of 24-25,000 units being reported or a conservative doubling in number.

In West Virginia over a million dollars of State funds have been spent on West Virginia Office of Miners Health Safety and Training's mine rescue team equipment in the past year, with over another million to be spent in the coming months as reported by the Director. The Board of Coal Mine Safety and Health (comprised of an equal number of labor and industry members, chaired by the Director) last year promulgated emergency rules (see Attachment 4) creating two new "state" mine rescue teams, for a total of four and two separate rescue stations -- one for the northern coal fields and one for the southern regions and requiring various equipment deemed necessary. These new teams

are designed to enhance the state's ability to respond to mine rescue activities if that need would ever arise.

Mine rescue deadlines in the "MINER Act" are rapidly approaching. It is estimated that as many as 35 new company sponsored mine rescue teams will be created with additional teams required for smaller operations and more may be required based on travel time. As you know, these provisions are extensive and may have far-reaching effects on mine rescue coverage being provided by state teams such as Kentucky. The MINER Act was intended to enhance the current system but unfortunately it may do just the opposite in the case of Kentucky. It is my hope that MSHA's anticipated proposed regulations will be flexible enough to recognize the successful delivery systems of mine rescue.

Plans for deployment of communication and tracking systems are due in West Virginia by July 31<sup>st</sup> of this year. MSHA has verbally indicated that they do not intend to accept any system yet. While we know that what we all envisioned, i.e. the ability to remotely pinpoint the location of any miner anywhere in the mine is not available, what is available is better than what is currently deployed. We are moving forward in West Virginia and hope that a year or so from now MSHA does not reject the systems that will soon be deployed in our state at a projected cost of approximately one quarter of a billion dollars.

This past legislative session in WV, with cooperation from the industry, labor, and government, attention turned toward accident prevention and the need to ensure that the tragic accidents experienced last year do not occur in the future. Senate Bill 68 has completed legislative action and is awaiting the Governor's signature (see Attachment 5).

Once again, I am pleased to report on the exceptional level of cooperation among the state, the UMWA and coal operators whose collective efforts resulted in a bill that will further enhance mine safety in West Virginia. This legislation addresses five (5) major areas:

- 1) A new administrative sanction that gives the Director of Mines the authority to close a mine if the conditions are such that would warrant such action. An imminent danger violation kicks-in the "Pattern" and potential closure of a mine. The current change requires a mine to have a history of repeated S&S violations caused by unwarrantable failure which demonstrates a disregard for miner health or safety;

- 2) The section on belt air allows existing mines to continue to use belt air provided the director inspects the mine's ventilation system and ventilation equipment and finds the mine meeting the requirements of 30CFR 75.350 (b). New mines will have to petition the director to use belt air to ventilate working sections and the ultimate resolution of this issue is tied to the outcome of the recommendations of the national technical study panel convened under the US DOL pursuant to the MINER Act;

- 3) The section addressing seals requires "protocols" for the inspection and examination of all seals and sealed areas to be developed by the Board of Coal Mine Health & Safety. It

also requires remediation of all Omega seals and establishes a daily exam if not replaced. Certified engineers are required to sign off on new seal design if they meet the “criteria established by the director” and also requires the results of seal examinations to be recorded in a book prescribed by the director;

4) SB 68 also requires continuing education for “underground” mine foreman fire bosses.

These provisions include: (a) 8 hrs of continuing education hours; (b) the content of the continuing education program to include a review of all changes in state mining laws and mine safety regulations and other subjects as determined by the Board of Miner Training, Education and Certification; (c) empowering the Board of Miner Training, Education and Certification to approve alternative training programs designed by coal mine operators; (d) providing for indefinite suspension until such individual completes a refresher program; (e) requiring OMHST to make continuing education programs available in regions of the state based on demand for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity; and (f) providing a procedure for out of state mine foreman-fire boss or an individual with a suspended certificate to gain active status by completing a retraining program developed by the Board; and

5) The Mine Safety and Technology Task Force has been codified in state law. The nine member Task Force is charged with exploring new mine safety technologies and related equipment and making recommendations on their use in coal mines.

In summary, I believe that in order for the miner protections designed and being implemented by the State of West Virginia to proceed as quickly as possible there must be cohesiveness and commonality in large part with the federal requirements being implemented after significant state requirements. This might be achieved through MSHA accepting requirements that have already been implemented and a through review of the rationale at which state requirements were determined.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity to be here today. I'd be happy to answer any questions you have.