

Remarks of
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for Mine Safety and Health
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Thank you for inviting me here today. I appreciate the opportunity to discuss MSHA’s initiatives to improve mine safety and health. While we would all agree there is more that needs to be done to protect the nation’s miners, I do believe the actions we are taking at MSHA and by many in the industry, are making a positive difference and moving mine safety and health in the right direction.

When I took the job as Assistant Secretary over two years ago, I had a clear purpose -- to implement and enforce the nation's mine safety laws and to improve health and safety conditions in the nation's mines so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift. In short, my goal was to make mining a better place for miners, their families and the mining community.

When I arrived, MSHA was already facing many challenges that demanded my immediate attention. A backlog in excess of 80,000 contested citations and orders overwhelming the system, mine emergency response in need of improvement, a relatively inexperienced inspection workforce at MSHA , an unfulfilled mandate from the 2006 Miner Act involving communications and tracking systems for underground coal mines, and concerns about

inconsistency at MSHA, to name a few. Add to that, the initiatives I planned to improve mine safety.

As I have said on a number of occasions, the tragedy on April 5, 2010, at the Upper Big Branch mine, just months after my appointment, unquestionably shook the very foundation of mine safety and caused us all to take a deeper look at the weaknesses in the safety net expected to protect the nation's miners and to re-double our efforts to instill a culture of prevention in mining.

Following that disaster, one of my most significant challenges was keeping MSHA focused on our overall mission and agenda to advance mine safety. The impact that tragedy had on the families of the miners lost and the mining community is not measureable. There has been an intense examination of that tragedy, and MSHA and the mining industry have undergone

significant change as we have sought to find and fix deficiencies in mine safety and health. MSHA's extensive investigation of that tragedy identified a workplace culture promoted by the operator that valued production over safety, including practices that intimidated and disrespected workers, and fostered and encouraged non-compliance.

The tragedy identified that more needed to be done to provide miners with a voice in the work place, and that MSHA needed to more aggressively use its tools under the Mine Act to enforce the law. We began taking actions immediately after the disaster, and we are still continuing to implement a number of initiatives to make mines safer.

On March 6, 2012, the agency released the results of its internal review, including recommendations for improving MSHA's

effectiveness; we are changing how we do business at MSHA. We have initiated several corrective actions, including a comprehensive review of agency directives and guidance, and a complete overhaul of our coal mine inspectors' handbook to make it clear and concise. We are also overhauling our policy directive system, and we are improving agency oversight and increasing training for our staff. Once and for all, we are addressing shortcomings repeatedly identified in several past agency internal reviews.

While we know many mine operators comply with safety and health rules to protect their miners from injury, illness and death every day -- we also know that there are those that do not.

Bringing those that do not live up to the standards of those that do---to better protect miners---should be a goal of all in the mining industry.

In carrying out our mission we have implemented several initiatives, most notably the impact inspection and the revised Pattern of Violations programs. In addition, our “Rules to Live By” initiative is aimed at eliminating the most common causes of mining deaths, along with providing information to the mining industry more quickly on causes of mining deaths and ways to prevent them. We also have focused attention on miners’ health, such as preventing black lung disease at coal mines and improving monitoring of the workplaces at metal nonmetal mines to prevent occupational illnesses.

Improving mine emergency response preparedness is another important initiative at MSHA. In addition, changes in processing citations and orders have been made, including the implementation of pre-contest conferencing, so disputes can be resolved before they become a matter for litigation.

New rules requiring more rock dusting in underground mines to prevent explosions and thorough examinations of underground coal mines to improve compliance and prevent injuries, illnesses and deaths have been issued. We have also targeted particular areas in the metal nonmetal industry to improve compliance, such as guarding on belt conveyors.

I have changed the way we implement new initiatives, meeting with stakeholders on the front end and providing them with the same training MSHA inspectors receive. Information on these initiatives is also sent to MSHA training instructors and state grantees that provide training to our nations' miners, as well as to those in industry.

All of these actions have resulted in gains for the cause of miner safety, as illustrated by recently updated statistics that point to noticeable improvements.

One of the enhanced enforcement strategies that we implemented after Upper Big Branch was the impact inspection program that targets mines meriting increased agency attention and enforcement due to their poor compliance or other particular concerns. From April 2010 through April 2012, we conducted 443 of these impact inspections at coal and metal/nonmetal mines, which resulted in 7,948 citations, 785 orders and 29 safeguards, for a total of 8,762 issuances.

A recent review shows that overall compliance is improving at mines after receiving impact inspections. Since September 2010, when MSHA launched the program, violations per inspection

hour are down 13 percent after mines received an initial impact inspection; Significant & Substantial (S&S) violation rates are down 21 percent; 104(d) orders are down 43 percent. The total lost time injury rate at these mines is down 13 percent.

Unfortunately, there are still mines that haven't gotten the message. The egregious problems found during some of these impact inspections, and the extreme measures MSHA had to take to find them - arriving off-shift and commandeering mine phones -- validate the Administration's support of focused improvements to the Mine Act to give MSHA the tools it needs to address chronic violators. Reinforcing this point, just last month during an impact inspection MSHA issued closure orders at a mine in Kentucky after finding it was mining without face ventilation -- exposing miners to an explosion and black lung disease .

We have in addition made a number of changes to the Pattern of Violation program, which we believe are also improving safety.

Mines are screened to determine if they meet potential pattern of violations (PPOV) criteria and, if so, are required to make compliance improvements to avoid POV closure orders and sanctions where S&S violations are found. We have strengthened the process, and conducted our second screening with the revised criteria. Since November 2010, we have issued a total of 28 PPOV notices at 26 mines, and issued two POV notices. It was the first time a mine was successfully subject to the POV closure orders in the Mine Act's 33-year history. 17 mines were placed on PPOV based on our November 2010 screening – four of those after agency audits revealed that mine operators had under-reported injuries. Following the 2011 screening, MSHA issued PPOV

notices at eight mines, down from the 2010 levels. We are encouraged by this result.

A recent review of enforcement data on the 14 mines that received the initial PPOV notices in 2010 found that the total violation rate among these mines is down 25 percent, the total S&S violation rate is down 44 percent, and the rate of 104(d) orders is down 66 percent. The lost time injury rate at these mines has dropped 43 percent.

We are conducting these PPOV screenings openly and transparently. The criteria we use for PPOV screenings are posted on our website, and in April of last year, we created a new on-line tool which permits any mine operator, miner or member of the public to determine, based on the most recent data available, how a specific mine matches up with the criteria for a PPOV. Any

operator can use the tool and implement immediate corrective actions to maintain compliance and prevent PPOV actions.

Compliance data also shows that improvements are occurring in the mining industry as a whole. In 2011, MSHA inspected about 14,170 mines and issued 157,678 citations and orders. This is down from 2010, when MSHA issued 171,018 citations and orders. Of the total number, coal issued 93,645 citations and orders in 2011, down from 96,848 in 2010, and metal/nonmetal issued 64,033 citations and orders, down from 74,170 in 2010.

We have seen improvements in the number of S&S citations and orders and unwarrantable failure orders as well. In 2011, MSHA issued a total of 49,582 S&S and 2,920 unwarrantable failure citations and orders; in 2010, 56,502 S&S and 3,370 unwarrantable failures were issued.

The drop from 2010 to 2011 in total citations and orders, as well as the decrease in S&S citations and unwarrantable failure orders, amounts to about 9 percent.

Underground coal mines unquestionably have the most challenging compliance issues. Of all citations and orders issued in 2011, 49 percent were cited at underground coal mines – but underground coal mines represented only 5 percent of the total mines inspected. While we do see compliance improving there as well-- citations and orders issued in 2011 were 76,698, down from 80,008 in 2010 - - there is clear need for more attention here.

MSHA's final rule on examinations in underground coal mines, which goes into effect on August 6, 2012, is aimed at improving compliance. The rule mandates operators to identify and correct violations of standards related to ventilation, methane, roof

control, combustible materials, rock dust, and other safeguards and guarding. These are the hazards most commonly cited by MSHA and are consistent with the standards emphasized in MSHA's "Rules to Live By" initiative, as well as the types of contributory violations cited in MSHA's accident investigation report on Upper Big Branch.

It also requires the mine operator to review with mine examiners on a quarterly basis all MSHA citations and orders issued in areas where pre-shift, supplemental, on-shift, and weekly examinations are required. This rule places mine operators in a proactive role by requiring them to identify a potentially hazardous condition before it results in a danger to miners.

On the metal/nonmetal side, we have been working on improving compliance as well. When I arrived at MSHA the most

commonly cited violations involved guarding of equipment and conveyor belts. In 2010, we published on our website “Guarding Conveyor Belts at Metal and Nonmetal Mines,” a PowerPoint guide providing detailed compliance information.

This guide was piloted through several state aggregate groups, presented to several stakeholder audiences and reviewed with our inspectors and supervisors. As a result, compliance has improved and guarding citations and orders are down 40% from 2010 levels.

Overall these improvements in operator compliance show that the culture in mine safety and health is moving in the right direction - but much more needs to be done.

In 2011, 37 miners died in work-related accidents at the nation's mines- second lowest since statistics have been recorded. There were 21 coal mining and 16 metal/nonmetal mining fatalities last year compared with 48 and 23, respectively, in 2010 - which included 29 at Upper Big Branch. 2009 saw the lowest fatality numbers with 34 total mining deaths - 18 coal and 16 metal/nonmetal. The mining industry finished fiscal year 2011 with the lowest number of mining deaths ever recorded in a fiscal year.

As low as the fatality numbers have come in recent years, we all know that one death is one too many and that mining deaths are preventable. The year the 1977 Mine Act was enacted, there were 273 total mining deaths in the US; 139 were in coal and 134 in metal /nonmetal. We've seen those numbers continue to fall

since then, and the distance to zero is much shorter now than it was in 1977. I know we all share the goal of zero fatalities.

Last year, I began a new initiative by providing detailed quarterly information on mining deaths to the mining industry, as well as training for the instructors and state grantees that provide training directly to miners and posting that on our website. I want to ensure that operators, miners and trainers receive this critical information to better train and protect miners. To prevent mining deaths, we must make certain that we are always focused on what caused them.

We are continuing our “Rules to Live By” fatality prevention initiative that we launched in January 2010 to focus attention on the most common mining deaths and standards associated with them. The second phase followed in November 2010; in January of this year, we announced “Rules to Live By III,” which

highlights those safety standards cited as a result of at least five mining accidents and resulting in at least five fatalities during the 10-year period from January 1, 2001 to December 31, 2010. Surface fatalities accounted for the highest number of fatalities in 2011 and the new “Rules to Live By” program addresses mostly surface mining deaths and standards.

I implemented a different approach in the rollout of these and other new initiatives. Stakeholder outreach and education occurs in advance so everyone will know what the program is about and what we expect before the program begins. That is followed by training of our MSHA inspection personnel through a distance learning program. The training program is posted on the MSHA web site, available to all, so everyone receives the same training and message before the enforcement component is initiated. This includes all training instructors and state grant recipients.

Consistency in the application and enforcement of standards remains a key concern to the mining industry, and we are continuing our efforts to improve consistency. As I noted when I became Assistant Secretary, MSHA's workforce had changed significantly. A number of inspectors had retired, and as a result, about 55% of the coal mine inspectors and 38% of MNM inspectors had been conducting inspections for MSHA for two years or less. Many supervisors were also relatively new. I quickly directed that a new training program for field office supervisors, who oversee implementation of the mine inspection program, to be developed to occur every other year. To date, all field office supervisors have completed this first round of training, which includes training in issues identified in agency audits and internal reviews.

Other initiatives to improve consistency include the regular review of enforcement actions, as well as audits conducted by the National Office and out in the field, all to assess compliance with policies and procedures.

MSHA has also sought injunctive relief to compel compliance with provisions of the Mine Act; increased focus on miners' rights; issued a number of bulletins to the industry on mine ventilation, rock dusting and the prohibition against advance notice; created MSHA coal district 12 to provide better management and oversight of the large concentration of coal mines in Southern West Virginia; reorganized our assessments office into an office that incorporates the management, support and coordination of both routine and special assessments, as well as agency headquarters accountability functions and special enforcement strategies; and completed the statutory mandate to

implement of the communications and tracking requirements in underground coal mines.

Mine emergency response was something we began to look at before the Upper Big Branch tragedy and working with stakeholders, I believe we have made significant progress by developing new technologies to aid in mine rescue, increasing mine emergency response training, improving command and control preparedness and engaging the mining community in a dialogue to identify and implement additional improvements. Last month, MSHA held a coal emergency mine summit at the Mine Academy in West Virginia, with many in the mine emergency community participating. We convened mine emergency response experts to talk about outstanding issues in emergency response and discussed action plans. Mine emergency response requires cooperation between MSHA and

state officials and other stakeholders and I think we are moving in the right direction.

I believe that the United States should be the world leader in advancing health and safety technologies, and there are those in the industry leading the way to develop needed technological improvements.

For example, Alliance Coal is installing proximity detection equipment on continuous mining machines to prevent crushing deaths and injuries – they are now up to almost 60, and Alliance has indicated that they expect to have 80-90 machines in operation by the end of the year. Consol is working on the application of proximity detection protections to section mining equipment, as is Peabody Energy. Consol is also doing valuable work to help develop through-the-earth audible communications,

and Arch Coal has been a leader in mine emergency preparation with the large scale MERD training it conducts. We have held and will continue to hold stakeholder meetings to foster continued advances and improvements.

Improving mine safety and health and instilling a culture of prevention in the industry is of great importance to President Obama, Secretary of Labor Hilda Solis, myself---and I am sure---everyone here today. The Secretary has articulated a forward-looking vision of assuring “good jobs” for every worker in the United States, which includes safe and healthy workplaces, particularly in high risk industries, and a voice in the workplace for workers as critical elements of a “good job.”

Many mines all across this country operate every day while adhering to sound health and safety programs. There is no reason

that every mine cannot do the same and create a culture of safety and prevention in every mine in the country.