

STATEMENT OF
JOSEPH A. MAIN
ASSISTANT SECRETARY OF LABOR
FOR MINE SAFETY AND HEALTH

BEFORE THE

SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN
SERVICES, EDUCATION, AND RELATED AGENCIES

COMMITTEE ON APPROPRIATIONS

U.S. HOUSE OF REPRESENTATIVES

APRIL 14, 2011

Chairman Rehberg, Ranking Member DeLauro, and Members of the Subcommittee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor's Mine Safety and Health Administration (MSHA) to discuss the President's request for our Fiscal Year (FY) 2012 budget.

The total request for MSHA for FY 2012 is \$384.3 million. The budget will provide for a completion of its mandatory safety and health inspections; support MSHA's enhanced enforcement initiatives and pattern of violation (POV) enforcement against flagrant violators and scofflaws; and allow MSHA to promulgate new standards that will reduce health hazards and ensure that miners return home from work every day in a safe and healthy condition. The request also allows MSHA to support the Agency's high priority performance goal of reducing fatalities and injuries and to continue its work to enhance mine rescue and emergency operations. Finally, the request will permit MSHA to continue to address the backlog of contested mine enforcement cases at the Federal Mine Safety and Health Review Commission (FMSHRC). MSHA is currently working to use all the resources at its disposal to effectively enforce the Mine Act and MINER Act, and to partner with the mining industry to ensure that the industry and those who derive their livelihood from the industry - especially those that play by the rules --

continue to thrive. The FY2012 budget, which includes a modest increase in resources, will allow MSHA to continue its efforts to protect the safety and health of miners.

THE TRAGEDY AT UPPER BIG BRANCH

I would like to give you a brief update on MSHA's ongoing investigation into the explosion on April 5, 2010 at the Upper Big Branch (UBB) mine in West Virginia that needlessly took the lives of 29 miners. The accident at UBB, which occurred a year ago--was the worst mining disaster since the creation of MSHA by the Mine Act and the deadliest coal mine disaster this nation has experienced in forty years.

Most of the costs of the UBB investigation have been supported by funds provided by Congress to the Department of Labor in the Supplemental Appropriations Act, 2010 (P.L. 111-212). These funds are available through July 2011. We have conducted the investigation in as transparent a manner as possible and have honored our commitment to the families to keep them as informed as we can about the findings of the accident investigation team. The families have been very much in our hearts and prayers as we work to conclude this complex investigation as quickly as possible. We have held seven family briefings during the continuing investigation and have briefed Congress and posted on our website information that we are able to release to the public.

To continue to be as transparent as possible, MSHA will hold a briefing on June 29, 2011 in Beckley, W. Va. to share with the public information gathered on the investigation.

MSHA's investigative team has been conducting an exhaustive investigation. Based on the evidence the team has gathered to date, it appears that a low volume of methane and or methane from natural gas provided the fuel for the initial ignition on or near the face of the tailgate side of the longwall shearer, or cutting machine. Small methane ignitions are not uncommon in coal mines, but when proper safety measures are followed, these ignitions are generally controlled or extinguished by proper ventilation and safety equipment on the longwall shearer, such as mining bits and water sprayers.

The evidence to date shows, however, that at UBB, the small ignition was not contained or quickly extinguished. The analysis also indicates that a small methane ignition transitioned into a massive explosion, fueled by an accumulation of coal dust that propagated the blast.

While the investigation is not complete, we do know already that explosions in mines are preventable. Most importantly, we know that a workplace culture that puts health and safety first will save lives and prevent tragedy.

I also want to note for the Committee that at the same time MSHA is investigating to determine the cause or causes of the accident to identify how to prevent future accidents, identify any contributory violations and assign penalties for violations found, the Department of Justice (DOJ) also opened its own investigation into possible criminal wrongdoing almost immediately after the explosion. In recognition of the President's instruction for the Department of Labor to cooperate with DOJ to ensure that every tool in the federal government is available in the investigation of the accident, MSHA is working to ensure that the separate criminal investigation is not jeopardized in any way by MSHA's own investigation.

That criminal investigation is ongoing, and on March 1, the U.S. Attorney issued the first indictment related to the disaster. The head of Security at Performance Coal, a Massey subsidiary, was indicted for obstructing justice and making false statements about his role in giving advance notice of underground inspections at the mine. On March 22, 2011, another former employee of Massey who had worked at UBB was also charged in the investigation with two felonies for false statements and for being improperly licensed as a mine foreman.

For the families, the past year has been incredibly difficult. The investigation is taking more time to finish than we would all like, as has been the case in past mining disasters. But we cannot forget that it was not just the UBB disaster that led to mining deaths in 2010. In addition to the 29 miners who died at UBB, 42 other miners died on the job last year for a total of 71 miners, compared to 34 in 2009. And most of these non-UBB related deaths are the types that are recurring in the mining industry.

KEEPING MINERS SAFE AND HEALTHY

I know that it is possible for a mine to be a safe place to work and a profitable business. I arrived at MSHA over a year ago with a clear purpose -- to implement and enforce the nation's mine safety laws and 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. After the explosion at UBB, the need

to think how we approach mine safety and health has taken on a new urgency. Our FY 2012 budget priorities reflect this urgency by bolstering resources for mine emergency operations; and for health specialists, health standards and dust sampling and monitoring equipment.

However, MSHA cannot accomplish its goals alone. It is for this reason that the Mine Act places the primary responsibility for preventing and eliminating unsafe and unhealthful conditions on the mine operators. Most of the industry makes the commitment to safety because it is not only the right thing to do, but the smart thing to do. Injuries, illnesses, and fatalities have for too long taken a toll on miners, their families, their communities and the mining industry.

MSHA supports the Secretary's vision of *Good Jobs for Everyone* by working to ensure that workplaces are safe and healthy---by reducing workplace fatalities and injuries---and to assure fair and high quality work environments. MSHA takes a comprehensive approach to achieve these goals by focusing on:

- (1) enforcing health and safety laws and standards through complete, annual inspections of each mine, and targeting the most egregious and persistent violators using MSHA's most aggressive enforcement measures, such as impact inspections, the POV program and injunctive actions;
- (2) targeting the most common causes of fatal mine accidents and disasters through initiatives such as *Rules to Live By* and *Rules to Live By II* and "Watch Out," improving training of miners, including new and inexperienced miners and contractors and fostering and enforcing a focus on prevention;
- (3) promulgating regulations and promoting other actions that reduce risks from exposure to mine dusts such as respirable coal mine dust that has claimed thousands of coal miners' lives and from other contaminants that ruin miners' health;
- (4) promulgating regulations to prevent deaths by requiring coal mine operators to examine underground work places for compliance with mandatory safety and health standards, and to reform the broken pattern of violations program to more effectively enforce the statute;
- (5) improving mine emergency response preparedness by MSHA and the mining industry;

(6) undertaking extraordinary education, compliance assistance and outreach to the mining industry in order to foster a culture of safety; and

(7) providing rigorous enforcement of miners' rights to report hazardous conditions with protection from retaliation.

For FY 2012, MSHA will further these goals by activities that specifically enhance miner safety; foster compliance through miner education and making sure that miners have a voice in the workplace; provide compliance assistance to mine operators that want to maintain a safe and healthful workplace; strengthen regulatory programs and improve transparency and public disclosure; and accelerate IT modernization. In addition, continuing to reduce the backlog of cases at FMSHRC is a high priority for the Administration and is crucial to the continued effectiveness of MSHA's enforcement program.

ENHANCING COAL MINE SAFETY AND HEALTH

The FY 2012 budget seeks \$161.3 million for Coal Mine Safety and Health activities, an increase of \$2.6 million from the FY 2010 appropriation. This program area is responsible for enforcing safety and health laws in some 2,100 coal mines throughout the country. The budget will allow Coal to continue to conduct its mandated inspections, and pursue investigations that are prompted by serious accidents, hazard complaints, discrimination complaints and willful or knowing violations. The increase of \$2.6 million would provide an additional:

- \$2.1 million to purchase continuous personal dust monitors to continue MSHA's aggressive actions to reduce miners' exposure to respirable coal dust. While considerable progress has been made to reduce dust levels in coal mines, miners continue to develop coal workers' pneumoconiosis (CWP) also called "black lung" disease. Although CWP is an incurable and potentially fatal occupational lung disease, it is entirely preventable through the use of effective dust control measures and new monitoring technology; and
- \$634,000 to support the new District 12 office, which MSHA is establishing in FY 2011 by dividing District 4 into two districts. The funds will support improved management oversight and increased effectiveness.

In FY 2012, Coal will continue its Quality Impact Inspections initiative, which began in April 2010 after the UBB mine disaster. The initiative targets mines whose history of underground conditions indicate a significant number of violations and or conditions that may include problems relating to methane accumulations, ventilation practices, rock dust applications and inadequate mine examinations. Targeted mines are also those that could be at risk of explosions, mines with histories of accidents or fatalities or mines with other warning signs, such as efforts to cover up violations or anonymous complaints.

MSHA has conducted and will continue to conduct these impact inspections in a way that shakes up even the most recalcitrant operators. MSHA has shown up at their mines during “off hours,” such as evenings and weekends. In some cases, MSHA has taken hold of the mines’ phone lines upon arrival to prevent unscrupulous operators from giving advance notice of inspectors’ presence at the mine. Our inspectors have gone into some of those mines in force, with sufficient personnel to cover key parts of the mine quickly before hazards could be hidden or covered up.

Coal will also continue MSHA’s *Rules to Live By* initiatives through industry outreach and enhanced enforcement that focuses on the 11 frequently cited standards in nine accident categories that cause or contribute to fatal accidents in the coal mining industry; and “*Watch Out*” and other safety alerts. Because empowering miners to report hazards is critical to reducing safety and health risks, in FY 2012, Coal will continue to implement policies and procedures to ensure that miners are aware of their right to report hazards without fear of retaliation.

FOSTERING SAFETY AND HEALTH IN METAL AND NONMETAL MINES

The 2012 Budget proposes \$90.0 million for MSHA’s Metal and Nonmetal Safety and Health activities, an increase of \$4.6 million from the FY 2010 appropriation. This program area is responsible for enforcing safety and health laws that protect 227,000 workers in nearly 13,500 metal and nonmetal mines. The metal and nonmetal sector provides essential raw materials for the nation's transportation infrastructure, construction and housing, communications, medicine, the arts, manufacturing, consumer goods and agricultural industries. The majority of metal and nonmetal mines are small business operations and many have no formal safety program. The budget will allow the Metal/Nonmetal program to continue to conduct its mandatory inspections in the mines it examines. The increase of \$4.6 million would, in addition to

approximately \$1.3 million to support the backlog reduction project as provided below, also provide:

- \$2.3 million to integrate the Small Mines Office program and personnel; and
- \$950,000 for health specialists who will help ensure that operators provide adequate protection to miners from exposure to hazardous contaminants.

With resources requested in the FY 2012 budget, the Metal and Nonmetal program will continue to perform accident prevention and health outreach activities similar to those being pursued in Coal. These include implementing MSHA's *Rules to Live By* initiatives through industry outreach and enhanced enforcement that focuses on the 13 most frequently cited standards in nine accident categories that cause or contribute to fatal accidents in the Metal and Nonmetal mining industry. MSHA will also implement *Spring Thaw*, which is an annual series of safety and health workshops sponsored by MSHA to increase awareness of mine safety throughout the Metal and Non Metal community, and various safety alerts. In addition, Metal and Nonmetal will vigorously pursue accident investigations and conduct investigations of safety and discrimination complaints made by miners or their representatives. Metal and Nonmetal will also continue to target mine operators who fail to keep hazardous contaminant exposures below established limits and encourage an industry-wide culture in which mine operators take ownership of health and safety through effective, prevention-oriented health and safety management programs; thorough inspections and robust enforcement; stakeholder outreach, education and training; and improved regulations. As with Coal, Metal and Nonmetal will continue to implement policies and procedures to ensure that miners are aware of their right to report hazards without fear of retaliation.

REDUCING THE BACKLOG OF CONTESTED CITATIONS

The UBB disaster enhanced the urgency of our need to address the backlog of contested mine enforcement cases at FMSHRC. Delays in the swift resolution of FMSHRC contested mine cases undermine MSHA's enforcement tools and put miners' lives at risk. In the Supplemental Appropriations Act, 2010 (P.L. 111-212), Congress provided \$18.2 million to allow the Department of Labor to begin to reduce the case backlog before FMSHRC, and for other purposes related to mine safety. The Act allows "such sums" to be transferred to MSHA. Of the \$18.2 million provided to DOL, \$10.9 million is being utilized by the Office of the Solicitor (SOL) to undertake additional litigation

and related legal work, and the remaining \$7.3 million has been transferred to MSHA to be used in the backlog reduction effort and to support the UBB investigation. The extra resources are helping us to resolve cases, and we continue to explore ways in which we can reduce the number of contested cases.

Last fall, I launched a pre-contest conferencing pilot program in 3 MSHA districts. The pilot allowed the mining industry to meet on the local level with MSHA to resolve differences over citations and orders before they contest them and add to the backlog. We are currently assessing the pilot program to determine how we can improve consistency and implement the conferencing program throughout MSHA to provide opportunities to resolve disputes before citations and orders are contested. I believe an effective pre-contest conference program could be an important tool in resolving disputed violations so they do not become part of the backlog. Along with other measures, we will propose revisions in the Part 100 penalty rules that will have a positive effect on the backlog going forward and will improve consistency in the citations issued by MSHA's inspectors.

The FY 2012 budget requests an additional \$18.3 million to allow MSHA to continue to support the Administration's backlog reduction efforts, as follows:

- \$3.3 million for an additional 15 technical advisors and case management support personnel for the Coal Mine Safety and Health (\$2.0 million) and Metal and Nonmetal Mine Safety and Health (\$1.3 million) programs.
- \$15.0 million for MSHA's Program Administration activity, with the flexibility to transfer funds to the Office of the Solicitor. These funds will provide the personnel and activities necessary to match an increase in Administrative Law Judges (ALJs) at FMSHRC.

These investments in addressing the backlog of penalty cases are particularly important because if we do not make progress in this area, mine operators who contest violations would have a longer period of time before those violations would become part of their violation history, delaying the impact of these violations on the operators' civil penalty assessments and POV enforcement actions. This in turn will lead to even higher contest rates and unsafe mines.

SUPPORTING A ROBUST REGULATORY PROGRAM

The FY 2012 budget proposes \$5.55 million for MSHA's Office of Standards, Regulations and Variances (OSRV), an increase of \$2.1 million from the FY 2010 enacted level. The budget will allow MSHA, in coordination with SOL, to develop compliance standards and regulations for the mining industry that protect the safety and health of miners. The FY 2012 request supports MSHA's robust regulatory program by allowing MSHA to:

- Work on health standards which require complex statistical, technical and scientific analyses, and assess the technological feasibility of new engineering controls in other rulemakings;
- Develop regulatory initiatives to require improved technology, such as proximity detection systems to prevent crushing and pinning injuries in underground mines;
- Revise MSHA's Legal Identity, Civil Penalty and POV requirements to allow the Agency to better target the most egregious and persistent violators;
- Assess regulatory needs for the implementation of comprehensive safety and health management programs to prevent injuries and illnesses;
- Assess regulatory needs for design, construction and maintenance requirements for metal and non-metal dams;
- Revise MSHA's examination standards to require operators to examine work areas in underground coal mines for violations of mandatory safety or health standards; and
- Reduce health risks by developing standards to reduce exposure to respirable coal mine dust and respirable crystalline silica.

AN EFFECTIVE CIVIL PENALTY PROGRAM

Civil penalties serve to encourage compliance and promote a safe and healthy workplace for miners. MSHA's Office of Assessments is responsible for all aspects of MSHA's civil penalty program, including assessment of penalties, processing mine operator hearing requests when operators file civil penalty contests with the FMSHRC, accounting for all penalty cases in litigation before FMSHRC and the federal courts, and collecting and accounting for penalty payments.

The FY 2012 budget requests \$6.6 million for MSHA's Office of Assessments, an increase of \$341,000 above the FY 2010 enacted level. The increase would fund two Technical Compliance and Investigations personnel to provide oversight through field

audits and evaluations and assure timely processing of civil, criminal and discrimination cases.

The Office of Assessments coordinates MSHA's POV program, which is responsible for identifying mines exhibiting a potential POV as described in Section 104(e) of the Mine Act. I have said that the pattern of violations, or POV process, is broken and MSHA is committed to fixing it. In the provision's 33-year-old history, no mine has ever been subject to the full measure of the law contemplated by Congress. While we had already launched a review of the POV process prior to the UBB incident, the disaster heightened the urgency of moving forward with reforms.

Therefore, in October 2010, we put new screening criteria in place for the POV program. This was a critical first step in reforming the current POV program to give MSHA an effective enforcement tool to address mines that repeatedly violate safety and health standards. Notifications of potential pattern of violations have been sent to 14 mines using these new screening criteria and procedures. The UBB mine also met the criteria but the POV process has been postponed pending the completion of the investigation into the April 5, 2010 explosion. Three of these mines ceased production with further actions pending. Of the remaining 11, 10 mines have completed their evaluation period. Eight mines met their improvement goals for reducing serious violations and two others did not. One mine's evaluation period is still ongoing. The mines that did not meet their goals now have the opportunity to submit a response to MSHA's evaluation report, and after review, MSHA will determine in each case whether the mine will be given notice of a pattern of violations based on established criteria. Additional mines are still under review for potential pattern of violation actions. We also are moving forward with proposed revisions to the existing POV regulation to make it as effective a tool as possible within the constraints imposed on the POV process in the statute.

RESPONDING TO MINE EMERGENCIES

The UBB disaster reinforced my concerns about MSHA's mine emergency response capabilities. I had already ordered a review to identify gaps in the system before UBB. Sadly, I saw many of those gaps first hand at the UBB site, such as inadequate communications and emergency equipment coordination.

MSHA has made major progress in this area. MSHA's new state-of-the-art mobile command center based in Pittsburgh is in service and nearing full operational capability. The mobile command will greatly improve MSHA's capacity to provide communications, advice and guidance during a mine rescue and recovery operation. At the UBB site, I had difficulty communicating with the Department's headquarters, and even with MSHA emergency response staff who were on the ground with me at the mine. Our new mobile command should help correct these difficulties. In addition, MSHA is updating its technology, developing standard operating procedures and implementing more comprehensive command and control training for the MSHA district personnel who would be responding to mine emergencies.

As a result of these improvements, we are better able to respond to and manage mine emergencies, but as MSHA continues its thorough review of emergency plans and procedures to identify and fix gaps in the system, we know that more needs to be done. The FY 2012 budget request supports this goal. It contains a proposed increase of \$850,000 in the Technical Support budget activity to purchase new mine emergency response equipment and to maintain existing equipment. The budget also includes an increase of \$450,000 for the Program Evaluation and Information Resources budget activity to upgrade mine emergency operations capabilities.

ATTACKING RESPIRABLE DUST

Black Lung still kills hundreds of former coal miners each year and severely impairs the lives of many more; there are alarming indications that it is on the rise, even in younger miners. On the health front, MSHA continues to move forward on its "*End Black Lung -- Act Now!*" initiative, which is a comprehensive strategy to fulfill the promise made 40 years ago with the passage of the 1969 Federal Coal Mine Health and Safety Act to eradicate Black Lung. According to the National Institute for Occupational Safety and Health (NIOSH), in the past decade, thousands of miners have died from Black Lung disease and miners are still getting the disease, including younger miners.

In addition, we strongly believe that coal dust played a role in the UBB disaster. On September 23, 2010, MSHA issued an Emergency Temporary Standard (ETS) on increasing the incombustible content of combined coal dust, rock dust and other dust in coal mines to minimize the potential for coal dust explosions. This ETS is based on research findings and recommendations by NIOSH.

The FY 2012 budget includes two important dust initiatives, totaling \$4 million. They include:

- An additional \$1.9 million to expand, modernize, and secure accreditation for the Mt. Hope laboratory. This lab processes all of MSHA's rock dust and mine atmosphere samples and additional resources are needed to replace outdated analysis equipment, add staff capacity and improve the number, speed and reliability of samples processed.
- \$2,000,000 for the Program Evaluation and Information Resources program to implement software to reengineer the health samples database to ensure sample integrity and support compliance reporting.

EDUCATING THE MINING COMMUNITY

The FY 2012 budget seeks \$36.3 million for Educational Policy and Development (EPD) activities, a decrease of \$2.3 million from the FY 2010 appropriation. This program area is responsible for providing unified and comprehensive direction on all matters related to MSHA's role in educating and training government, industry and labor to recognize, eliminate and prevent hazardous conditions in the mining environment. With these funds, and in addition to its regular activities, EPD proposes to:

- Expand its distance learning program by an additional 10 online courses developed for use by MSHA's entry-level inspectors, bringing the number of courses available to 57; and
- Continue development of its pilot project to identify viable mobile devices and software applications that can improve efficiencies and enhance training services by EPD staff;

The decrease in EPD's request is attributable to MSHA's proposal to integrate the Small Mines Office program and personnel into the Metal and Non Metal district offices. This proposal is designed to increase the effectiveness of the program by allowing managers to focus on areas where their expertise is needed. This will provide more meaningful compliance assistance, leading to reduced overall fatality and accident rates at all mines.

CONCLUSION

Mr. Chairman, overall the Department's FY2012 budget reflects difficult choices that will help put our nation on a sustainable fiscal path while also investing in programs and activities that will fuel economic growth. For MSHA, this cannot mean compromising the safety of our nation's miners, but our budget does include offsets and efficiencies that represent some difficult choices.

At the end of the day, it comes down to this: there could never be enough resources to allow MSHA to be at every mining operation, every shift of every day. Maintaining a safe and healthful workplace is the responsibility of mine operators who must fully exercise their responsibilities under the law. We are not asking too much. Mines all across this country operate safely every day while adhering to sound health and safety programs. I look forward to working with the Committee to ensure that the Mine Safety and Health Administration has the necessary resources to accomplish our shared goal of providing our nation's miners the safety and health protections they deserve.