

**NOMINATION OF EDWIN G. FOULKE, JR., AND
RICHARD STICKLER**

HEARING
OF THE
**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

RICHARD STICKLER, OF WEST VIRGINIA, TO BE ASSISTANT SECRETARY
OF LABOR FOR MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF
LABOR; AND EDWIN G. FOULKE, JR., OF SOUTH CAROLINA, TO BE AS-
SISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND
HEALTH, U.S. DEPARTMENT OF LABOR

TUESDAY, JANUARY 31, 2006

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**NOMINATION OF EDWIN G. FOULKE, JR., AND
RICHARD STICKLER**

TUESDAY, JANUARY 31, 2006

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:07 p.m., in room SD-106, Dirksen Senate Office Building, Hon. Michael B. Enzi (chairman of the committee) presiding.

Present: Senators Enzi, Isakson, DeWine, Kennedy, Murray, Reed, and Clinton.

OPENING STATEMENT OF SENATOR ENZI

The CHAIRMAN. I am going to call to order this hearing. We will be joined shortly by others. Some of the policy luncheons are finishing at about this point in time. I will go ahead and do my opening statement, and by that time I am sure we will have been joined by others, and that way we can stay close to the schedule.

I would like to welcome everyone to the confirmation hearing for Edwin Foulke to serve as Assistant Secretary of Labor for Occupational Safety and Health, and for Richard Stickler to serve as the Assistant Secretary of Labor for Mine Safety and Health.

As we meet today, although the events of the recent past will not be the subject of our hearing, it is impossible to separate our focus on the issue of workplace and mine safety from the tragic mine accidents in three mines in West Virginia and Kentucky. For the past few weeks, the attention of the Nation has been centered on these mines as we watched the heroic efforts that were underway to try to save those who were trapped far below the surface. We then shared in the sorrow that the families felt as they received the news that their loved ones had died before they were able to be rescued. Our thoughts and prayers continue to be with all those whose lives were forever changed by that tragedy.

The loss of those men in the darkness of that mine has brought a great light to bear on the issue of mine safety and the need for us to use every resource at our disposal to make every workplace, especially our mines, safer.

A week ago last Friday, I traveled to West Virginia with Senator Rockefeller to meet with the families of the Sago Mines and to begin our committee's review of mine safety issues. I was accompanied by our ranking member, Senator Kennedy; our Employment and Workplace Safety Subcommittee chairman, Senator Isakson; and although she was unable to come with us because of an injury,

Senator Murray, the ranking member of the Employment and Workplace Safety Subcommittee sent her very capable staff.

Now, as we met with the families of those who had lost husbands, sons, fathers, we were moved by their determination and dedication to working with us to ensure that everything is done to both prevent and better respond to accidents in the future. Their firm resolve that a mining accident would never leave another family without a father strengthened our own commitment and increased our determination as a committee to look for ways that we as legislators could be part of the solution of this complex problem of workplace safety.

Now, I can only imagine the pain of losing a loved one under circumstances like these, and we saw them trying to cope with their loss. It quickly became apparent that words were inadequate without a corresponding pledge to take action. Each of us who traveled those miles to West Virginia in our own way promised those families that the loss of their loved ones would not be an end but the beginning of the work that has to be done to address the issue of mining and workplace safety.

Today, this committee begins the task of fulfilling our own responsibility for ensuring mine and workplace safety by examining the plans of our Nation's principal workplace safety officers for both the short-term and long-term change in our mines and other dangerous work environments.

Now, our journey begins by ensuring that the Federal positions charged with overseeing worker safety are filled with accomplished, experienced, and visionary leaders. Fortunately, we will not be alone in that effort. The accidents of the past few weeks have brought together labor, industry, legislators, and other stakeholders on the local level, the State level, and the national level, all determined to make changes that are needed to make our mines as safe as they can possibly be.

Now, coming from Wyoming, mining and worker safety are very familiar to me. As a former mayor of Gillette, WY, I know well that part of Wyoming we call "the energy capital of the world" because of the deposits of coal and coalbed methane and oil and uranium that are found there. Today, Wyoming is the largest producer of coal in the Nation. We mine and ship an average of 1 million tons of coal a day. Coal is vital to the economy of my State and equally vital to the economy and energy security of our country.

I am also familiar with workplace safety issues and regulations from some of my employment before I ran for this office. I was an accountant, and one of my clients suggested that if they had a workplace safety program, they could save money. The owner of the company said to me, "Well, then, do it." I said, "Oh, no, no. I am the accountant. I am not a safety person." He said, "Well, you already know more about it than anybody that works for me, so do it." And so I organized a safety program and got to see the advantages of having that happen and the difference that it can make and the money that it can save.

Now, it is much better if it is done by true professionals, and that is why we have true professionals before us today. But my experience there taught me lessons I have never forgotten about what does and does not work in an effort to make the workplace safer.

It also served to impress upon me the sincere and genuine interest of both employers and employees in the creation and the effort to maintain safe and healthful workplace environments.

If history has taught us anything, it is that the advances and innovations that have been made in other fields of science and engineering are among the most effective means of addressing workplace safety. That means we must investigate the innovations that have been made by agencies like NASA and the work being done by the Department of Homeland Security to provide first responders to the scene of an accident with the tools they need to immediately begin rescue efforts. At the very least, it means using available technologies that may be able to locate miners and send them communications. It may be that we have the technology to do that and more, and we certainly have the technological base upon which to build even better tools for tomorrow.

A hearing has already been held in the Senate and legislation has already been introduced on the State level to promote the use of tracking devices to determine where miners are to aid rescue efforts. In addition, there are already personal emergency devices in use in some mines that make it possible to deliver emergency text messages underground. In 1998, there was a mine fire in Utah, and the use of these devices helped 45 miners escape to safety.

These devices are available now; however, we have to improve their effectiveness so they can be used in more mines. Then in the event of an accident, we would know exactly where the miners are, and using these emergency devices, we could communicate to them and let them know if there are any routes available to them to bring them to a safe haven from which they could be rescued.

It is unfortunate that it took the accidents at those mines to focus our attention on these issues, but it is clear of the need for better safety procedures that demand our action and demand it now. It is also clear that providing and promoting better safety procedures will produce better results for every company in terms of production, morale, and the ability to more effectively compete in the marketplace.

Last year, the total number of mine fatalities was the lowest ever recorded. The injury rate in the mining industry was also the lowest on record. Overall, that tells me that the industry has made strides, improving and promoting workplace safety. However, we can do better. We must look for new and better ways to make mines and other hazardous workplaces safer for all workers.

Legislation will surely play a role in this effort. As the chairman of the committee, I intend to work with my committee members, as well as other interested Senators and stakeholders, to draft legislation very soon to provide and promote mine safety based on the following principles:

First, we must implement laws and regulations that work in the real world, not merely ones that score political points inside the Beltway. In doing so, we must keep our approach to workplace safety simple and easily understood by everyone involved, including small businesses and their workers.

Second, we need to realize that workplace safety is a team effort and it involves everyone on every level of the organization. It even involves the families. There are no adversaries in the effort to pro-

mote workplace safety. To achieve success, we have to get everyone involved from the top down and the bottom up. Of course, employers have to take an active leadership role in the effort, that is, leading the best way, by example, and it will ensure workers understand the importance of safety by making it everyone's first and primary responsibility.

Third, we must recognize that every worker must have every possible tool at their disposal to increase their safety, and that comes with the training and supervision necessary to ensure that they are using the equipment properly and safely. As in all things, workplace safety involves training, a constant improving of skills, and a good basic education on ways to avoid accidents and what to do if they occur.

Over the years, the Occupational Safety and Health Act has helped in the promotion of workplace safety by reducing by 60 percent the number of workplace fatalities and decreasing by more than 40 percent the rate for occupational illness and injury. One of my primary goals upon coming to Congress was to improve the effectiveness of Federal worker safety oversight and not to create more bureaucracy and red tape.

Just before the holidays, I introduced three OSHA reform bills, and each is cosponsored by five fellow members of the HELP Committee. We believe that this legislation will improve both OSHA and worker safety, and we look forward to moving them this year.

At the Federal level, the Occupational Safety and Health Administration and the Mine Safety and Health Administration are the two bodies that Congress has charged with the primary responsibility for ensuring and enhancing workplace safety. It is essential to this mission that both agencies have experienced and permanent leadership. At present, neither of these important agencies has the benefit of such permanent leadership.

While both agencies have been ably served by dedicated individuals in acting capacities, the benefits of permanent leadership cannot be understated. We now have the opportunity to realize these benefits by the expeditious confirmation of the two nominees appearing before this committee today. It is an opportunity on which we must act now to provide the leadership that is needed to begin the process of addressing the issues of workplace safety that have come to light in the past few weeks.

Equally essential to the permanency of the leadership at these agencies is the experience of those who will lead them. The committee nomination process is where we have the opportunity to hear from the nominees and to review their qualifications. I would urge my colleagues to wait until we have had the chance to hear from the nominees and to review their responses to our questions before they reach final judgment.

We are fortunate to have two nominees who have spent their entire working careers deeply involved and engaged in issues that lie at the core of their respective agencies' responsibilities. Richard Stickler, the nominee to head the Mine Safety and Health Administration, has extensive experience in the mining industry that spans over 37 years. Mr. Stickler has worked as a miner, engineer, mine construction foreman, mine shift foreman, superintendent, and manager. He left private sector employment in 1997 to become the

director of the Pennsylvania Bureau of Deep Mine Safety, where he served for 6 years.

Now, like Mr. Stickler, Mr. Foulke's professional career has been one of extensive involvement in workplace safety issues. Mr. Foulke is an attorney who has specialized in the practice of labor and employment law. He is a partner in the firm of Jackson, Lewis, Schnitzler & Krupman, and a member of the firm's OSHA practice group. In addition to his private practice, Mr. Foulke served as a member of the Occupational Safety and Health Review Commission for 6 years, 5 of which he served as the chairman.

I look forward to hearing from both of you today.

At this point we will go ahead with the opening statements by the two nominees. I want to thank both of you for attending. I appreciate the cooperation you have given us on getting the credentials together. I would mention that Mr. Foulke has letters from Senator Graham and Senator DeMint, and he is accompanied by his wife and his mother.

I would mention that Mr. Stickler has a letter of recommendation from Governor Schweiker.

The CHAIRMAN. Mr. Stickler, would you like to make your statement?

STATEMENTS OF RICHARD STICKLER, OF WEST VIRGINIA, TO BE ASSISTANT SECRETARY OF LABOR FOR MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR; AND EDWIN G. FOULKE, JR., OF SOUTH CAROLINA, TO BE ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR

Mr. STICKLER. Mr. Chairman and members of the committee, I would like to thank you for inviting me here today. I am honored to be here, and I am humbled by the President's confidence in me to lead this critical agency.

Mr. Chairman, you can read my resume to learn about my qualifications for this job. I believe I have the background and the experience to do this job.

But I sincerely welcome the opportunity to tell you why I want to come out of retirement to accept this position, if confirmed by the Senate.

Mr. Chairman, I have been an underground miner. I was in the mines before the Federal Mine Safety and Health Act was passed. I can attest to the fact that the mines are safer today because of MSHA, and I am committed to this law.

I have also been a member of a mine rescue team. I have participated in attempts to rescue miners.

In 1968, I was working underground in a mine adjacent to the Farmington Mine when 78 miners lost their lives due to a methane gas explosion. The sights and sounds of that experience as well as other tragic accidents will be with me as long as I live.

Mr. Chairman, Senator Kennedy, I know what it feels like to lose friends and co-workers in tragic mine accidents. I have great empathy for those at the Sago and Aracoma Mines who have just recently felt that same loss. There is nothing worse.

As a mine superintendent and a State regulator, I know what it is like to face the families.

Some people have asked me why I still want this job considering the increased scrutiny that MSHA is under. They know me well. They know I am not one for the spotlight.

But I want this job because I have "been there." I believe I have something positive to contribute to this agency and its mission. I want nothing more than to see fatal accidents and injuries continue to fall.

I had the opportunity over the course of my career to work at almost every level in the mining industry. I have been a rank-and-file miner, a foreman, and superintendent. I have experience managing large and small mining operations, including the largest underground coal mine in the Nation. I have experience managing operations with various safety challenges.

My passion for addressing these challenges by itself does not solve safety problems. I follow an analytical approach to identify the root causes of accidents. With others on my team, I develop systematic solutions, set improvement goals, and measure results.

These solutions to improve mine health and safety include the implementation of innovative engineering, new technology, safety training, and participative management processes. It goes without saying that adherence to standards is also key.

I chose to leave the mining industry in 1997 to serve as Director of the Pennsylvania Bureau of Deep Mine Safety, where I served for 6 years. The decision to accept that position was based on my desire to spend the remainder of my career focused specifically on improving mine health and safety.

This is also my reason for accepting the President's nomination to this critically important position at the Department of Labor.

Throughout my career, I have witnessed legislative improvements as well as increased funding for mine health and safety, and I thank you for that. As a result, we have seen tremendous improvement in mine health and safety, but the job isn't done until we can prevent tragic accidents like Aracoma and Sago Mines.

I feel indebted to the thousands of miners that I have known, including my father and my grandfather. If I am confirmed, I will do my best to honor the legacy of those who have labored to provide fuel and natural resources for our Nation. I would appreciate the chance to work with the President, the Secretary of Labor, and the Congress to see mine safety continue to improve in our Nation's mines.

Thank you.

The CHAIRMAN. Mr. Foulke.

Mr. FOULKE. Thank you, Mr. Chairman and Senators of the HELP Committee. I am deeply honored to appear before you today—

The CHAIRMAN. I don't think your microphone is on. I am sorry.

Mr. FOULKE. The light is on.

The CHAIRMAN. Can you pull it a little closer to you, then?

Mr. FOULKE. Can you hear me now?

The CHAIRMAN. Thank you. Yes.

Mr. FOULKE. Thank you, Mr. Chairman. I am deeply honored to appear before you today. I am also deeply honored to have been nominated to be Assistant Secretary of Labor for Occupational Safety and Health by President George Bush and to be supported

in my nomination by Secretary Elaine Chao. I am also grateful to Senators Lindsey Graham and Jim DeMint for their kind letters of support. I would also like to introduce to the committee my wife, Wendy, and thank her publicly for being supportive of my returning to Washington to serve our country. Also, my mother is here, too. I think all of you know the personal sacrifices that are associated with public service for our spouses.

Permit me just a few minutes to take time to tell you about myself. I attended college on a swimming scholarship at North Carolina State University, where I graduated with honors in political science. I graduated from Loyola University in 1978 and took my first job with a labor and employment law firm in Greenville, SC. It was at this job that I began to work in the area of occupational safety and health.

In October 1989, I was nominated by then-President George Bush to be Chairman of the Occupational Safety and Health Review Commission. I served on the Review Commission for a little over 5 years in both the Bush and Clinton administrations. The Review Commission is an excellent forum to see firsthand that there are two sides to every issue and to appreciate that the law must be fairly applied in all cases.

After leaving the Review Commission in 1995, I joined the Jackson Lewis law firm and have headed up the firm's OSHA practice group nationwide. I have been involved in all aspects of the workplace safety and health law in my 20-plus years of OSHA practice. I have worked with clients in a wide variety of industries and handled OSHA matters in many States throughout our great country. In my practice I have represented not only large and medium-size companies, but also many small family-operated businesses. Also, as Chairman of the Review Commission, I was responsible for oversight of the day-to-day operations of the agency.

I recognize the importance of this job to our Nation's working men and women. Having been involved in a number of OSHA fatality investigations, I am acutely aware of the devastating effect such accidents have on families, as well as employers, fellow workers, and the surrounding community. The impact of these tragedies can never be minimized. For this reason, injury, illness, and fatality prevention will continue to be the top priority of OSHA if I am confirmed.

Having been involved in hundreds of OSHA inspections and cases, I am aware of the issues OSHA personnel face in carrying out their responsibilities. I realize the importance of continuing to enhance the training and professionalism among the compliance officers, and, if confirmed, I will look for ways to encourage and reward such professionalism.

I have also heard the concerns of employers, especially small employers, over their lack of knowledge of what is expected of them. If confirmed, I will work to provide more tools and assistance to all employers who lack the expertise and the resources to have a comprehensive safety program. To achieve this, I will continue to pursue the outreach, education, and compliance assistance efforts instituted by my predecessors. However, strong, fair, and effective enforcement will still play a visible and active role in OSHA's overall game plan, if I am confirmed.

Finally, I am aware of the desire of workers throughout our country who want to work sure in the knowledge that they have a safe and healthful job. If confirmed, I will devote the time and energy to provide the assistance and information they need in the language they understand to help them achieve this desire.

In closing, if confirmed, I will work tirelessly to improve the safety and health of all working individuals in America. I want OSHA to expand its outreach and to partner with all stakeholders working toward the common goal of substantially reducing occupational injuries, illnesses, and fatalities. I want to make a positive contribution in making OSHA "the resource" for all employers' and workers' safety and health needs. Finally, I want to ensure that OSHA is efficiently using its resources to improve workplace safety and health and that the programs and initiatives are yielding the maximum results for workers and their employers alike.

I would like to thank the committee for allowing me this time for these remarks, and I will be happy to answer any questions the members of the committee may have.

[The prepared statement of Mr. Foulke follows:]

PREPARED STATEMENT OF EDWIN G. FOULKE, JR.

Mr. Chairman and Senators on the HELP Committee, I am deeply honored to appear before you today. I am also deeply honored to have been nominated to be Assistant Secretary of Labor for Occupational Safety and Health by President Bush and to be supported in my nomination by Secretary Elaine Chao. I am grateful to Senators Lindsey Graham and Jim DeMint for their support. I also would like to introduce to the committee my wife, Wendy, and to thank her publicly for being so supportive of my returning to Washington to serve our country. All of you know the personal sacrifices that are associated with public service for our spouses.

Permit me to take just a few minutes to tell you about myself. I grew up in Pennsylvania just outside Philadelphia. I attended college on a swimming scholarship at North Carolina State University in Raleigh where I graduated with honors in political science. I graduated from Loyola University Law School in New Orleans in 1978 and took my first job with a labor and employment law firm representing management in Greenville, South Carolina. It was in this job that I began work in the area of occupational safety and health law.

In October 1989, I was nominated by President George Herbert Walker Bush to be Chairman of the Occupational Safety and Health Review Commission. I served on the Review Commission for 5 years in both the Bush and Clinton administrations. The Review Commission is an excellent forum to see first hand that there are two sides to every issue and to appreciate that the law must be fairly applied in all cases.

After leaving the Review Commission in 1995, I joined the Jackson Lewis law firm and have headed up the firm's OSHA practice group nationwide. I have been involved in all aspects of workplace safety and health law in my 20 plus years of OSHA practice. I have worked for clients in a wide variety of industries and have handled OSHA matters in many States throughout our great country. As a result, I have worked not only with Federal OSHA, but also with many officials in OSHA State plans. In my practice, I have represented not only large and medium size companies, but also many small family operated businesses. Because of my extensive involvement in the OSHA area, I have come to know many of the top OSHA officials at the Federal and State levels. Also, as Chairman of the Review Commission, I was responsible for oversight of the day-to-day operations of the agency. All this previous experience and my background will allow me, if confirmed, to "hit the ground running" at OSHA.

I recognize the importance of this job to our Nation's working men and women. As head of OSHA, I understand that I will be ultimately responsible for helping to ensure as much as possible that every employee in the United States works in a safe and healthy workplace. Because of my years of involvement in this area, I also believe that health and safety in the workplace has positive economic value. Fewer injuries and illnesses mean less loss work time and greater productivity and ability to compete in the world marketplace.

Having been involved in numerous OSHA fatality investigations, I am acutely aware of the devastating effects such accidents have on the families, as well as employers, fellow workers, and the surrounding community. The impact of these tragedies cannot be minimized. For this reason, injury, illness and fatality prevention will continue to be the top priority of OSHA if I am confirmed.

In working to achieve this goal, I believe communication and outreach to all stakeholders in the process is essential. At the Review Commission, I found that the more input I received, the better the decisions I made. In addition, it is important to have measurements in place to determine if progress and success is being made towards the agency's goals. To do this, I will look to set goals for programs or initiatives that not only are achievable, but also are measured accurately. Also, OSHA must ensure that any program initiatives or commitments it undertakes will be adequately funded.

I also understand the importance and the inter-dependence of the three major responsibilities of the OSHA. These are: (1) standard setting and revision, (2) compliance assistance, and (3) enforcement. Each of these aspects contributes to the overall success of OSHA and the achievement of OSHA's ultimate goal of having an effective safety and health program in every worksite in the country.

Having been involved in hundreds of OSHA inspections and cases, I am aware of the issues OSHA personnel face in carrying out their responsibilities. I understand the challenges OSHA compliance officers encounter in conducting workplace inspections. I realize the importance of continuing to enhance the training and professionalism among the compliance officers. If confirmed, I will look for ways to encourage and reward such professionalism.

I also have heard the concerns of employers, especially small employers, over their lack of knowledge of what is expected of them. Based on my experience, the vast majority of employers want to have a safe and healthful workplace, but do not have the understanding, processes and/or tools to accomplish this. If confirmed, I will work to provide more tools and assistance to all employers, but especially to the small employers who lack the expertise and resources to have a comprehensive safety program. To achieve this, I will continue to pursue the outreach, education and compliance assistance efforts instituted by my predecessors. This will include expanding partnership and voluntary programs at the local, regional and national levels. However, strong, fair and effective enforcement will still play a visible and active role in OSHA's overall game plan.

Finally, I am aware of the desire of workers throughout our country who want to work sure in the knowledge they have a safe and healthful job. If confirmed, I will devote the time and energy to provide the assistance and information they need and in a language they understand to help them achieve that desire.

In closing, if confirmed, I will work tirelessly to improve the safety and health of all working individuals in America. While OSHA has done much to improve safety and health in the United States, there is still much that can be accomplished. I want OSHA to expand its outreach and to partner with all stakeholders working toward the common goal of substantially reducing all occupational injuries, illnesses and fatalities. I want to make a positive contribution in making OSHA "the resource" that all employers, especially small employers, as well as all working men and women, are encouraged to turn to, without fear, to receive assistance, and for answers to all their safety and health needs. The more successful we are, the greater will be the numbers of employers and workers who recognize that instituting a comprehensive safety and health program not only provides tangible benefits, but will also assist those businesses to become more competitive at local, national and global levels. Finally, I want to help ensure that OSHA is effectively using its resources to improve workplace safety and health and that its programs and initiatives are yielding the maximum results for workers and their employers alike.

I thank the committee for allowing me this time to make these remarks. I will be happy to answer any questions the members of the committee may have.

The CHAIRMAN. I want to thank both of you for your statements, and I will have Senator Kennedy do his opening statement, and then we will proceed to questions for you. We will do 5-minute questions per person, but we will go as many rounds as anybody has questions to ask.

Senator Kennedy.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Well, thank you very much, Mr. Chairman. I want to acknowledge our strong leadership on our side by Senator Murray, who is our ranking member on this committee, works with Senator Isakson, has taken on the real responsibility in terms of worker safety, employment, and training programs. So I am grateful for all that she does in helping us better understand and try to create an atmosphere and a climate to make sure that we are going to have the safest working atmosphere for workers in any place in the world. There is no reason not to have it, and I see my colleague Senator Reed here as well, so I thank him for his attendance and involvement and their concern about this issue.

And I thank you, Mr. Chairman, and, Senator Isakson, I thank you for bringing us all down to West Virginia just a few weeks ago. I will say more about this in just a moment.

I was here when we passed the OSHA legislation, and what a difference it made for workers. You know the difference: a 75-percent reduction in terms of fatalities of workers, from 16 out of every 100,000 workers to 4 out of every 100,000 workers. It has been dramatic. And that is when we had very, very tough enforcement, and the savings of lives has just been profound, and the reduction in terms of injuries. And it has taken a variety—it takes tough enforcement, tough inspection, and also issuing these various safety rules and regulations.

Last year, 2004, is the first year in 10 years that rate of fatalities went up. Deaths went up. We want to make sure we have someone that is going to really be serious about the enforcement of OSHA.

This administration is the first since the OSHA Act was passed to fail to issue a single major safety standard. We know the difficulty. Some of these standards have taken 10, 12 years to get out, and we know the power of the various industries. But this is the first time that we haven't had a single major safety standard. Maybe there is a good reason for it, but I have not heard it. We have seen the deaths go up. We have seen the failure to have an OSHA standard on this.

The administration has refused to take really any action on ergonomic standards. I know they have a difference with the previous administration, but we are well beyond the Clinton administration. We have the Academy of Sciences that has done a review about ergonomics. We had study after study done by the Academy of Sciences. We know that the administration took issue with what the Clinton administration did, but we do not have any action by this administration on ergonomics. And with the scientific record that we have, we want to know why. We want to know why.

We also are going to come back to the questions about the enforcement and the penalties. Every day workers are killed. Their employers walk away with a slap on the wrist. These are family members who are mourned and loved.

Mike Morrison was killed in a trench cave-in last year when the employer ignored safety rules. The employer was fined \$21,000.

Les James was the second worker killed at his company. It ended up paying only \$2,700 in fines, and another worker died on the job 2 years later.

So we want to know what you are going to do about those kinds of circumstances. They are troublesome and bothersome. We congratulate you on the nomination, but this is what you are walking into.

I want to thank as well Mr. Stickler for his willingness to take on this challenge. It brings us back, as the Chairman remembers, Senator Isakson, I know Senator Murray did everything she possibly could on relatively short notice. We are grateful to the chairman for bringing us down to West Virginia. And I for one will never forget—and I am sure the chairman has mentioned this, and Senator Isakson as well—the meeting with the families there. It was just one of the most moving meetings that I have had ever—in public life or private life—the couple of hours that we spent there. The frustration of the various miners that wanted to go back into the mine, risk their own lives to try and save others. The knowledge that these miners had about the nature of the dangers that people were facing and the suggestions that they had. The emotions which they reflected in describing what they perceived to be the last hours of their husbands, their loved ones who were in that mine, in dark and getting darker and darker and the fear that they had and their hopes and dreams of being able to see their children.

I think all of us who went there made the commitment that we were going to do everything we possibly can to make sure that we were not going to have any more mine disasters and that we were going to do everything that we possibly can. And I am very hopeful and will do everything I can to make sure that those that are doing the investigations of these tragedies are going to listen to these families. They were a source of enormous ideas, suggestions, recommendations, and insights that should not and must not be lost.

As we were listening down there to a number of those people speak about the new technologies, we were listening, well, if we have new technologies that are going to be there, electronics that are going to follow the men around, that may be a danger in terms of sparks, and this may make it more dangerous in the mine. If we put oxygen down in the mines, we are creating perhaps a new kind of hazard down there if there is going to be some fire. And we heard—at least I did—a number of suggestions that were made about new technologies and new ideas, and then we kept hearing about how we couldn't do that, it just was too dangerous.

Well, yesterday, 72 miners in Canada were saved after a mine fire because a Canadian law requires rescue chambers where miners have 36 hours of breathable air, they have water, they have light, and they have supplies. And every one of those miners came out of a deep mine where there was fire, and every one came out alive. And it is difficult for me to be able to talk to those families and say how can they do it in Canada and we can't do it here. And I have to be convinced that you have the energy, the enthusiasm, the knowledge, and the willingness to be able to do it here, Mr. Stickler, to vote for your confirmation.

I thank the Chair. I appreciate it.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

Today we will hear from the nominees for two major positions at the Department of Labor. The two people before us today are nominated to positions of the highest trust and it is our obligation to focus closely on whether they can fulfill that trust. Richard Stickler has been nominated to head the Mine Safety and Health Administration, and Edwin Foulke has been nominated to head the Occupational Safety and Health Administration.

The recent tragedies at Sago Mine and Alma Mine in West Virginia remind us that the safety of the Nation's workers must be paramount. Mining continues to be extremely hazardous—it has consistently been the first or second most dangerous industry in the country. This year we have had 17 mine fatalities, 15 of them in coal mines. This is already over one-quarter of the deaths that we saw during all of last year.

Our entire Nation joins their families and their communities in mourning these fallen miners. Mr. Chairman, I ask for permission that a complete list of the miners who were killed at Sago and Alma mines be included in the record today.

We have a continuing obligation to do everything we can to protect the safety of America's workers. It's obvious that we are not meeting that obligation today. Whoever leads MSHA in the future can and must do better.

Two weeks ago, Senator Rockefeller hosted a visit by our committee to West Virginia. Chairman Enzi, Subcommittee Chairman Isakson and I met with the family members of the miners who died in that tragic accident and with coalminers; we met with company representatives and talked with health and safety experts. Each of us made a sincere commitment to improving the Nation's mine safety laws.

Our committee will hold a hearing in early March to discuss the initial findings of the investigation into the Sago Mine disaster. I look forward to working with my colleagues to develop a bipartisan bill to meet our obligations to the Nation's miners.

These recent tragedies highlight the critical role played by MSHA. Unfortunately, the administration has often given mine safety short shrift, seeking to reduce the coal safety enforcement budget in 4 of the last 5 years, and cutting nearly 200 positions from it.

We need to reverse this trend, and our Nation's coal miners deserve a nominee who can do this. We need a person of vision, who will be an aggressive leader in strengthening MSHA and preventing future tragedies like the two we have already experienced.

I'm concerned that Mr. Stickler may not be that person. He is not someone with an extensive background in safety and health issues. His record at the Pennsylvania Bureau of Deep Mine Safety does not show an aggressive attempt to raise standards—in fact, it seems at times he may have sought to loosen them. Hopefully, we will learn more today about his record and his views about the direction MSHA should take.

There are a number of key priorities that I believe any leader of MSHA must address.

Obviously, the first priority will be the investigation of the Sago Mine and Alma Mine disasters. These families must be heard—they know a great deal when it comes to protecting miners' safety. It is incredible to me that in accident investigations, the company is allowed to be present, miners are allowed a representative, but the family members of a miner who has been killed have no voice. We must find a way to bring their knowledge and experience into the process.

We also need to combine strong standards with advances in technology. Techniques for extracting coal and metals from the ground have improved immensely in recent years, but the technology for miners' oxygen self-rescue units and communications equipment is 30 years old.

I know that MSHA is collecting information on possible technologies over the next 60 days. But collecting information is not enough.

We already know of better communications and miner tracking technology from Australia—it has been available in the United States for several years, but only a handful of mines here in the United States are using it, despite its proven ability to help save miners' lives. And 72 workers at a mine in Canada were saved yesterday because Canadian mines are required to provide adequate stores of oxygen. We need to require that up-to-date technology and resources be applied to every mine in the United States.

We also need to see that every mine is adequately prepared to respond to future emergencies. When miners are trapped underground, every minute is precious. Yet our laws and policies do not require mine rescue teams to be onsite. All too often it takes hours for rescuers to reach a mine, and when they do arrive, they may not be familiar with the layout of the mine.

We also are losing experienced miners to work on these teams, as the Pennsylvania Mine Safety Department identified when Mr. Stickler was its leader. Yet, incredibly, in December 2002, MSHA withdrew an initiative to improve mine rescue capabilities from its regulatory agenda.

A critical duty of the Assistant Secretary is to enforce mine safety laws. Many of us are concerned that the current system does not provide a significant deterrent to mine operators who continually violate the law. Sago Mine had an injury rate nearly three times that of the national average and had been cited by MSHA for over 200 safety violations in 2005. Nearly half of these were "serious and substantial"—meaning that the violations had the potential to lead to serious injury. Eighteen of the violations were so serious that they led to partial closures of parts of the mine.

I know that President Bush has proposed raising maximum fines for the most flagrant violations from \$60,000 to \$220,000. But the minimum fines are part of the problem—they are so low as to be toothless. It is difficult to believe that penalties lower than traffic tickets will deter companies that make millions of dollars in profits each year.

All of these issues must be front and center for the future leader of MSHA. Our Nation's miners and their families deserve no less.

We will also hear today from Mr. Ed Foulke, the nominee to head OSHA.

We have made major progress since OSHA was first created in 1974. The fatality rate has dropped by 75 percent, and injuries have also been drastically reduced.

But we still have a long way to go. There are still too many workers being injured on the job. In 2004, over 5,700 workers were killed and over 4 million workers were injured or became ill because of their jobs. Most troubling, the rate of worker deaths on the job increased in 2004, for the first time in over 10 years.

This week we remembered the deaths of the 7 brave astronauts—including Christa McAuliffe—who were killed as they sought to do their job, to extend our research into outer space. The whole Nation mourned them.

Yet twice that many workers are killed in this country every day. Most of their cases do not become news stories, but that does not make their deaths any less tragic.

There is much that needs to be done to make the Nation's workplaces safer. The focus is on mine safety today, but workers in other industries also face serious risks, and the head of OSHA has a heavy responsibility to protect them.

Several priorities are clear. OSHA must complete needed safety rules. We know that strong safety standards save lives. Its cotton dust standards saved hundreds of thousands of textile industry workers from brown lung. Standards also save employers money and increase productivity. OSHA's vinyl chloride and cotton dust standards made industry more productive and safer for workers.

But the Bush administration is the first since the act was passed in 1974 that has failed to issue a single major safety standard. A number of safety standards have been delayed for years in the Department, some of which were already in final form when President Bush took office, but still have not been completed.

We're still waiting for a rule to see that employers provide needed personal safety equipment, such as hard hats and safety gloves.

Failing to ensure that workers have such equipment is a particular burden for low-income workers. The Congressional Hispanic Caucus has stressed that the lack of a rule hurts Latino and immigrant workers. Such protections are clearly overdue.

Our health and safety laws also need to keep up with industry changes. We need a way to quickly and effectively determine what exposure limits to toxic chemicals are safe for workers. Mr. Foulke himself has testified before Congress, on behalf of the Chamber of Commerce, about the need to set new Permissible Exposure Limits, and I look forward to hearing from him about what he would do to see that these protections are updated.

Ergonomics is another priority, since it's the leading health and safety issue facing workers today. Nearly 1.5 million workers suffered ergonomic injuries last year, and over 400,000 of them lost time away from work.

Employees need strong standards to protect them from these painful and often crippling injuries. Yet this administration has refused to issue such a rule, relying instead on a "Comprehensive Plan" to address ergonomics violations.

Since the announcement of its plan, however, the Department has issued only three sets of final industry guidelines—which are only voluntary and leave tens of millions of workers uncovered. The

Department has brought only 17 general duty citations for ergonomics violations. These protections are far from comprehensive. We must do more.

In addition, OSHA's actions should reflect a serious commitment to protecting workers' safety. Unfortunately we see too many examples of companies getting away with slaps on the wrist. Companies are putting millions of workers at risk in factories, construction sites, nursing homes, and many other workplaces every day.

Civil penalties under the law have not been increased since 1990. Every day workers are killed on the job and their employers walk away with a slap on the wrist.

Mike Morrison was killed in a trench cave-in last year. The company had ignored required safety precautions and was fined \$21,000. Les James plunged to his death from a window-washing job, and the company was fined only \$2,700—even though another worker had been killed on the job 4 years before. And tragically, another worker at that company fell to his death 2 years later.

This is a chronic problem. A December 2005 investigation by the *Kansas City Star* found that in accidents in the area in which workers were injured or died, half of the fines paid by employers were \$3,000 or less. And in multiple cases where workers were killed, OSHA reduced the seriousness of the citation from "willful" to "unclassified," and fines were likewise reduced.

Criminal penalties are also weak. Killing a worker by willfully violating the health safety laws is punishable by a maximum of 6 months in jail—half the length of sentences imposed for acts like harassing a wild burro. With these inadequate penalties, far too many cases go unprosecuted.

Because this problem is systemic and gravely serious, I've addressed it in legislation introduced last year. The Protecting America's Workers Act will increase civil and criminal penalties when workers are killed or seriously injured. It will also give family members the right to participate in investigations and to have a voice when OSHA negotiates with employers about reducing or adjusting fines.

Finally, OSHA must do more to protect our Nation's most vulnerable workers. Latino and immigrant workers are at greater risk of occupational injury or illness, because they are concentrated in some of the most dangerous jobs in the country, including jobs in construction, sweatshops, and landscaping.

The promise of our health and safety laws is waiting to be fulfilled. The best way for us to honor the Nation's dedicated working men and women is to see that the full promise of these laws becomes a genuine reality for every working family in every community in America. I look forward today to hearing from Mr. Foulke about what he will do to fulfill that trust.

Sago Miners

- Thomas Anderson
- Alva "Marty" Bennett
- James Bennett
- Jerry Groves
- George Junior Hamner
- Jesse Jones
- Terry Helms
- David Lewis

- Martin Toler, Jr.
- Fred Ware, Jr.
- Jackie Weaver
- Marshall Winans
- *Surviving Miner* Randal McCloy, Jr.

Alma Miners

- Don Bragg
- Ellery Hatfield

The CHAIRMAN. Thank you. We will now go to the rounds of questions, and I will lead off.

That truly was a moving day that we had down there, meeting with the families, also meeting with the miners on the crew that were able to get out, and talking to all of them about what kinds of things could have made a difference, should have made a difference.

Of course, one of the things that we can easily work on is new technology, but one of the things that I was told was that when we have new technology, it has to be approved by MSHA before it can actually go into use. And so if we were to locate some technology that was kind of fail-safe down in these mines, underground mines, how long would it take MSHA to procedurally approve it, do you think, Mr. Stickler?

Mr. STICKLER. Senator, I am not familiar with the current lag time on approving permissible equipment, but I would tell you that I would do everything I possibly could to get it approved and used in an expeditious manner.

The CHAIRMAN. Thank you. In reviewing your nearly 40-year career, I did note that in addition to serving in the supervisory and managerial positions, you also began your career—and you mentioned this in your testimony, too—as a coal miner, and then later was even a member of a mine rescue team. And you served 6 years in the public sector as a Government regulator with the Pennsylvania Bureau of Deep Mine Safety.

Given this background, I was somewhat surprised by recent criticism of your nomination to the effect that your experience was somehow inadequate or that it suggested you would only represent the interests of the mining industry, and I would like to give you an opportunity to respond to those claims.

Mr. STICKLER. Well, I think my experience is in the record and speaks for itself as far as the positions I have held, the jobs I have done, and the education and knowledge that I have.

But as far as enforcement of the mine safety laws, I think a good example is the performance that I had in the State of Pennsylvania. During the 6 years that I was director of the Pennsylvania Bureau of Deep Mine Safety, the enforcement actions were trending up. In other words, they were higher the year I left than the year that I took the job.

The CHAIRMAN. Thank you.

Mr. Foulke, the biggest challenges for OSHA, as you know from our discussions, workplace safety is a very important issue to me and one which I have been involved in for much of my career, and you have as well. Certainly much progress has been made, but I believe we can do better.

What do you see as the biggest challenges for reducing workplace injuries and fatalities? And how could OSHA address them under your leadership?

Mr. FOULKE. Senator, I think getting the information and the tools to small employers, particularly, who don't have the resources or the personnel to have an effective safety and health compliance program, I think if OSHA can provide those tools and work to get that information to the small businesses—because, unfortunately, a lot of small businesses as a general rule don't even belong to any type of employer organization or association, so they really don't have the resources from there. So if somehow OSHA can provide those resources and tools to be able to have an effective compliance program and to understand really what standards are applicable to them, what best practices are out there for their particular industry, those are the type of things that I think if we can get that information to them, it is going to help them put together a comprehensive safety and health program and thus help reduce their injury and illness rates and hopefully avoid any type of fatalities at their facilities.

The CHAIRMAN. Thank you.

Back to you, Mr. Stickler. I know that you served as a member of a mine rescue team—I just mentioned it a few moments ago—and you played a successful central role in the rescue of the nine trapped miners at the Quecreek Mine. That was in Pennsylvania. With your background, could you share your views about how rescue operations are currently conducted and whether these practices or procedures should be reviewed or changed?

Mr. STICKLER. My experience for many years in mine rescue has given me knowledge about the practice and the process, and it is a team effort. It is a team, and I was a Pennsylvania State representative on that team in the command center. Also in the command center, there is a representative of the mine operator. If it is a unionized mine, there will be a representative of the employees and a representative of the Federal agencies.

So that is a team that works to plan the strategy for the rescue operation. They develop the plans. The plans in the cases that I have been involved in are reduced to writing, and all of the parties in the command center sign that agreement before you move forward.

But the primary responsibility of the command center is to manage the overall rescue activity, and certainly in my experience at Quecreek, we had over 700 people involved, volunteers mostly, in that rescue activity. And we found it best to try not to micro-manage but to delegate a lot of things and provide input to different experts to the command center before we made decisions.

The CHAIRMAN. Thank you. My time has expired.

Senator Kennedy.

Senator KENNEDY. Why don't we go to Senator Murray, who is the ranking member of the subcommittee. I would let her question first, and then I would follow when it is my turn.

Senator MURRAY. Well, thank you, Mr. Chairman, for having this extremely important hearing, and thank you both for being here today. We are very interested in your answers. I know I will have more questions to submit that I will not be able to ask today, but

it is terribly important that both of you recognize that the lives and the health of thousands and thousands and thousands of Americans will be in your hands, and the philosophy that you direct these departments and agencies with. I certainly think the mining accident made all of us much more aware that what we enact in terms of regulations and how we enforce those and whether they are voluntary can make the difference in whether or not someone's life is saved or not. So both of you are potentially heading up agencies that all of us are really looking to, to see where they go from here.

I echo the words of Senator Kennedy, Mr. Stickler, and I know you are an honorable man. I think I want to hear from you where you are going to fall when it comes down to enforcing these regulations. I know West Virginia enacted very quickly a package of mine safety reforms, and I want to know from you, Are you going to move forward quickly in that direction, or are we going to hear more of the voluntary private partnership philosophy of they will do the right thing if we just sit back and let them? Or do you believe that we should move forward quickly with new mine safety provisions?

Mr. STICKLER. Well, I am aware that MSHA has already sent out the notice for information regarding technology for mine rescue or rescue devices or new technology in general. And if I am confirmed, I would look forward to reviewing the record of the information that comes in.

Senator MURRAY. Do you see yourself coming back and encouraging us to move forward quickly on regulations to make sure that this does not happen again?

Mr. STICKLER. I think whatever it will take to prevent these kind of tragic accidents is what I will pursue, the best of my ability to put those in place.

Senator MURRAY. We do not know you well. Are you a fast-acting, emphatic person? Or are you a person who sits back and looks at study after study?

Mr. STICKLER. Well, I am an engineer, I am analytical, but I don't think I have ever had paralysis from analysis. I try to get to the important points in my analysis and make appropriate decisions, and certainly the many years that I have been a manager requires somebody that can make decisions quickly.

Senator MURRAY. You have a lot of background and experience. Do we need to update the laws that are out there?

Mr. STICKLER. The Federal mine health and safety laws?

Senator MURRAY. Yes.

Mr. STICKLER. I think generally the laws are adequate. Since 1977, I have reviewed thousands of mine accidents and doing accident data analysis, and in the vast majority of the cases, the accidents could have been prevented had the law been complied with.

Senator MURRAY. Do you think that was the case recently in the mining accidents?

Mr. STICKLER. Well, that accident investigation has not concluded, and the only information I have about it is what I have seen in the news media, and some of that may not be correct. But my experience has been that it is very important to complete a thorough investigation, collect all of the facts, and analyze those to

determine the root cause. Once you have the root cause identified, then it is not that difficult to determine what corrective action should be taken.

Senator MURRAY. OK. Thank you. I think that answers my question, and I just have a minute left, and I do want to direct a question to Mr. Foulke.

I think you know that when OSHA was chartered, it was to assure, insofar as possible, every working man and woman in the Nation safe and healthful working conditions. And I just have to say that, looking at your resume and knowing that you come from a law firm that defends corporate clients against workers, causes me concern as to which side you are going to be on. And so I will be listening to you, the answers to your questions as to whether you are going to be advocating for workers. If you could just comment real quickly, and then I have a question on asbestos I want to ask.

Mr. FOULKE. Well, Senator Murray, I would say that my practice, especially through the Review Commission and then since then with my current law firm, you know, has been focused on safety and health, and that I have worked with clients not only to abate their problems, the citations that they have received, but also to work with them to enhance their safety and health programs. So I think my—

Senator MURRAY. Do you think it should be voluntary, or do you think that we need mandates?

Mr. FOULKE. Well, Senator, I think you need both, to tell you the truth. The act itself was set up and had a strong enforcement provision in the act. And so enforcement clearly is a tool that OSHA has to have, utilizing to ensure that workers are protected. But, also, we have to have, I think, the compliance outreach to assist employers to have programs in place, because, really, when you look at it, enforcement in the long run normally deals with after-the-fact when there has been some violation or some problem has occurred.

Our goal should be to prevent any injuries and illnesses in the future, and so I think you work with the enforcement but also have the compliance assistance program to assist in getting those programs in place that we never have that problem.

Senator MURRAY. Mr. Chairman, if you will indulge me just one question on asbestos, and I would like to submit my other questions for the record. I have done a great deal of work in the U.S. Senate on trying to ban the production and importation of asbestos in this country and have seen the devastating impacts. As we all know, we are now struggling with how to pay for it. This country still allows the use of asbestos in the industry. Do you think that OSHA should propose a ban on the use of asbestos in the United States?

Mr. FOULKE. Well, Senator, I look at it from an OSHA perspective. We do have our asbestos standard in place, and I think that as long as we are assuring that that standard is being enforced, that employees and workers will not be exposed to asbestos.

Senator MURRAY. So you think it is okay to have it here as long as we are just watching our workers?

Mr. FOULKE. It is my understanding that asbestos was no longer being utilized.

Senator MURRAY. Asbestos is being used in this country today. Mr. FOULKE. Well, on that issue, if the Congress was going to be promulgating some type of standard or some type of regulation, I would be happy to work with you on that and provide input.

Senator MURRAY. Well, I will submit a number of questions on the record. Asbestos still is imported and used in a number of products in this country, including brakes, and we are trying to deal with the health outcomes of that exposure. And it seems to me the first thing we should do is ban the use of it, and I will submit a number of questions for the record on that issue, and several others, Mr. Chairman.

[The prepared statement of Senator Murray follows:]

PREPARED STATEMENT OF SENATOR MURRAY

Mr. Chairman, thank you for calling this confirmation hearing to review the qualifications of the President's nominees to head the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA).

The recent mining disasters in West Virginia should serve as a stark warning to all of us that we need to do more to protect our workers on the job. MSHA and OSHA should stand at the forefront of efforts to protect workers through new technology and new regulations.

Instead, we have seen this administration's industry-dominated political appointees remove numerous critical health and safety regulations from their safety agenda.

And today it would appear we are being offered more of the same. While I am sure Mr. Stickler and Mr. Foulke are honorable men, their professional backgrounds give me pause. I wonder whether a coal company executive like Mr. Stickler will continue MSHA's policy of entering into voluntary partnerships with his former industry colleagues, while failing to move forward on important technological and other mine safety improvements.

Under his industry predecessor, MSHA pulled 18 health and safety regulations from its agenda, reduced fines, and sought budget cuts and staff reductions at the agency. In his testimony Mr. Stickler said the Mine Act was working just fine, yet we know that over the last 5 years there have been over 400 fires in underground coal mines, often ignited because of accumulations of coal dust. A regulation to reduce coal dust was pulled from MSHA's regulatory agenda in 2002.

For the last several years, Mr. Foulke has worked for Jackson-Lewis, which is widely known as one of the most anti-worker law firms in the country. A lawyer with a background of defending his corporate clients against workers who have been injured on the job does not strike me as the best hope for improving worker safety.

And it certainly does not square with the original language Congress used when chartering OSHA—"to assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

Mr. Chairman these are the only two agencies in the Federal Government which are explicitly chartered to protect workers on the job. Given their professional backgrounds, I am not at all sure these two nominees are the best candidates to fill these two criti-

cally important jobs. The President should go back to the drawing board and nominate individuals with health and safety backgrounds that will put the interests of workers first and foremost on their agendas.

We owe that to the families of the miners in West Virginia, as well as the thousands of other workers around the country who are injured on the job every year.

The CHAIRMAN. Thank you.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

For my edification, if there was an organizational chart of OSHA, Mr. Foulke, are you over Mr. Stickler, or are you all independent of one another?

Mr. FOULKE. On an organizational chart, we are side by side working to protect workers' safety and health.

Senator ISAKSON. OK. So you don't have veto power over him?

Mr. FOULKE. No. He looks a little bit bigger than me, too.

Senator ISAKSON. OK. Well, then I will direct all these questions directly to Mr. Stickler.

Mr. Stickler, I will reserve judgment on Sago until the investigation is done. They say the most dangerous person is Washington is a member of the Senate that just got home from a fact-finding mission, and I fall in that category. I have learned more about mining in the last 2 weeks than I ever thought I would know. I traveled with Senator Kennedy, Senator Enzi, and Senator Rockefeller to West Virginia. But I will reserve my judgment on that incident until all the facts are in from the investigation.

However, I want to talk about things we need to do when accidents occur that could save the lives of miners that do not exist now in the mines. It became apparently clear to me, in talking to the company, the miners in general, and the families, that the absence and inability of a mechanism to communicate from the surface into the mine at the time of an accident is the single most critical deterrent to safe rescue. Would you agree with that, or am I off base?

Mr. STICKLER. I agree with that. Yes, absolutely.

Senator ISAKSON. And then, second, it appeared to me that if you had that communication and that ability reliably, the second most important thing would be to be able to have some accessibility to oxygen beyond the 1 hour that the miners carry with them. Would that be kind of second?

Mr. STICKLER. Yes, Senator. I have been involved in developing emergency plans for mines, and in those plans of the mines that I operated, I include spare units at the worksite as well as positioned units strategically along the escape route coming out of the mine. So, absolutely, you need enough oxygen for each miner to assure that he will have a supply to come from his work area to the surface.

Senator ISAKSON. I will be conducting, along with Senator Murray, a hearing on the 15th—really, a roundtable on the 15th of February regarding new technologies or the need for new technologies to deal with mine accidents, to deal with mining in general, mine accidents in particular, and we will be looking for those things from around the world, whether it is whatever they use in New Zealand

or Canada or in some mines in the United States. But one thing I have become aware of, it appears that there has not been a catalyst for innovation, either monetarily or from miners or from mine owners or from MSHA. So I have a question for you.

Do you think MSHA, as well as being a regulatory and enforcement agency, could find a way to be a catalyst for invention—and you are an engineer—for example, in the communication device in some way?

Mr. STICKLER. Well, I believe so, and if I am confirmed, I would work very closely with NIOSH. During my 6 years that I served as Director of Pennsylvania Bureau of Deep Mine Safety, I worked with NIOSH on a lot of their research, particularly in the area of mine rescue. Pennsylvania mine rescue teams were trained at NIOSH facilities, the underground coal mine research in Pittsburgh and the stone mine down in Lake Lynn in the southwestern part of Pennsylvania. And as an exchange, we tested the latest technology and infrared heat-sensing equipment and communication systems and so forth and so on. And I would look forward to doing everything I can to advance technology. I think technology has done more to improve health and safety during my career than any other area.

Senator ISAKSON. Well, I appreciate your answer because, as I said, I am going to hold my comments on the accident at Sago until the investigation is done. I think that is really the way you ought to do that. However, I sat with Senator Kennedy and Senator Enzi and Senator Rockefeller with those families. I noticed in your testimony you had a sentence in there that you yourself have been one to have to visit with families that had losses in the mines. And based on that day of testimony and talking to everybody, it was patently clear to me that the lack or the absence of innovation in communication and in oxygen accessibility is the single biggest difficulty in the case of the Sago Mine, one or both of those could have in combination allowed us to save those miners.

I sat next to a young lady who handed me this picture. This is a picture of Junior Hamner, who died on January 2nd in that mine. He is her father. This is a picture of him and the eight-point buck that he shot the day after Christmas in West Virginia. And that young lady told me, she said, “Mr. Isakson, just promise me this: that my Daddy’s legacy will be that others won’t die in the mines.”

I think every one of us on this committee wants to work with you, and in turn, OSHA and the Secretary, to do everything we can to do that. And I have a suspicion that the most important thing we can do is be a catalyst to make the innovation that lacks today accelerate at such a rate that miners in mines in this country, and, for that matter, around the world, have an ability to communicate with the surface reliably that does not depend on wires or hardlines; and, second, had accessibility to oxygen so that if there is an accident and they reach it with their 1-hour device, they can maintain themselves until CO₂ levels, methane levels, or other levels are down so the rescue teams can go in.

And if you are confirmed—and I am delighted that you have the breadth of experience you do in mining—it is my sincere hope you will work with us to be a catalytic agency for that type of comple-

tion of the technology that we need so this does not ever happen again.

And that was not a question, Mr. Chairman, but that was a statement, and I appreciate your time.

[The prepared statement of Senator Isakson follows:]

PREPARED STATEMENT OF SENATOR ISAKSON

I am pleased to welcome Mr. Richard Stickler and Mr. Edwin Foulke to today's hearing. As Chairman of the Subcommittee on Employment and Workplace Safety, I am eager to work with both of you upon your confirmations.

I come to this hearing today with a heavy heart. It was just a few days ago that I joined the chairman and ranking member of this committee, as well as Senator Jay Rockefeller on a visit to Upshur County, West Virginia. It was, to say the very least, one of the most moving experiences of my life. Before we left, Senator Rockefeller, my good friend and colleague, told me I'd feel right at home with the people of his State. Indeed I did. I was honored and humbled to join my colleagues in speaking to the devoted families of the miners who perished in the Sago Mine tragedy. We listened intently for over 2 hours while these brave men and women shared their pain, their grief, and their frustration. But they also shared a hope. Their hope was that future miners will never suffer like their loved ones did, sitting in the dark, slowly suffocating to death on poisonous gases. One family even gave me a picture of one of the deceased miners, which I will keep with me as a constant reminder of our mission to ensure miners' safety.

The trip, however, was every bit as educational as it was emotional. We heard of the need for better communications between miners and those on the surface. We learned of the possibility that technology will allow miners to carry more oxygen in case of emergency. We discussed ways that mine rescue teams could be on the scene at mine emergencies more expediently.

All of these are important points of discussion, and I plan to work with the chairman, ranking member and all the members of this committee on ways we can be a catalyst for positive change in the area of mine safety.

Mr. Stickler comes to us with a long and distinguished history of working to ensure the safety of mines. For over 30 years, Mr. Stickler has worked deep in the mines of Appalachia. During that time, he has held a number of positions including manager, superintendent and shift foreman. More recently, he spent 6 years as director of Pennsylvania's Bureau of Deep Mine Safety. Note I said he worked in the mines . . . not in an office in New York or Philadelphia. Mr. Stickler is a man who for most of his adult life has wiped the coal dust off his boots every night. This is the man we need leading the Mine Safety and Health Administration.

If and when confirmed, Mr. Stickler will head an active, effective, and well-funded Federal agency. Total MSHA funding under this administration is consistently higher than it was under the previous administration. During the fiscal years 1996–2000, MSHA funding averaged about \$208 million. The Bush administration, working closely with Congress, has increased that figure to an average of \$266 million a year during fiscal years 2001–06.

Moreover, funding for coal mine administration alone is up to an average of \$115 million per fiscal year under the Bush administration versus \$107 million per fiscal year under the previous administration.

Importantly, the number and nature of mines is constantly changing, and MSHA must reflect this reality by continually shifting funds between coal, metal, and non-metal mines. Last year's figure of \$140,000 MSHA-spent dollars per coal mine is by far the highest in history. The same figure for 1996 is \$72,000, revealing that MSHA spending per coal mine has nearly doubled over the past 10 years.

Enforcement of mine safety standards in this administration is strong and getting stronger. In 2004, the last year of available statistics, MSHA imposed \$8,453 of fines per mine, compared to only \$5,649 at the end of the previous administration. Today, an MSHA enforcement staffer oversees only 3.39 mines, compared to an average of 3.8 mines during the previous administration. Clearly, this agency is active and fully engaged in the ongoing struggle to make our mines safe.

This commitment of Federal resources, combined with intensive efforts by the mining industry to continually enhance mine safety, resulted in 2005 being the safest year in the history of American coal mining. Since the turn of the century, coal mine fatalities have dropped 42 percent, and the number of coal mine injuries has dropped 22 percent. Over the same time period, fatalities at all mines, including metal and non-metal mines, has dropped 33 percent, with injuries dropping 25 percent.

Just as we must examine MSHA funding and MSHA enforcement in terms of per mine expenditures, a more true analysis of mine safety requires noting the number of fatalities and injuries per mine. These data, too, are promising. Since 2001, the number of coal mine fatalities per 1,000 mines has been nearly cut in half, from 19.6 to 11.1. Rather than deliberating over how many office staff MSHA should have here in Washington, it is imperative we focus on these real safety results that are so crucial to miners' health and well-being.

Obviously, however, the recent tragedies remind us that there is never enough that Congress, MSHA, or the mining industry can do to ensure the safety of miners. I have met with Mr. Stickler, and I know he understands this. I congratulate him on his nomination and look forward to working with him in ensuring the safety of miners nationwide.

The CHAIRMAN. Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you. Thank you very much. I have a number of questions. We will try and get through them here.

First of all, even though it isn't required under MSHA, can you give us assurance that you will talk to these families in some setting?

Mr. STICKLER. Yes, and I know that MSHA has done that in the past. And if I am confirmed, at some point, probably at the end of the investigation, I would sit down and review the report with them and give them the opportunity to—

Senator KENNEDY. Well, I appreciate at the end of the investigation. I think it might be useful at some time—it is not required in the regulations, but it seems to me in the investigation that it would be useful to sit down with those family members in some kind of setting to get their recommendations.

Mr. STICKLER. I understand that MSHA has made a commitment to a public hearing.

Senator KENNEDY. Well, I will get the details of that, but it would be useful and helpful if you would give us the assurance that you will sit down with them some time before the end.

Mr. STICKLER. Right. I would.

Senator KENNEDY. You are aware that personal emergency devices—you know, this is not a new issue, this issue of communications. In the 1977 act, there is a whole provision on communications, recognizing the need of it, and these personal emergency devices, miners in Australia have developed them, the PEDs that miners wear attached to their belt. It allows people outside the mine to send messages to miners deep underground. The lightweight device has been used in mines in other countries and is available in the United States, but only a handful of companies use them.

This is a grave disappointment given that we know they can save lives. PEDs helped alert 46 miners in Willow Creek Mine in Utah to evacuate before a fire engulfed their mine in 1998.

Were you aware of these devices when you were head of the Pennsylvania Bureau of Deep Mine Safety, and did you promote their use?

Mr. STICKLER. Yes, I was aware of those, and I was involved in some testing that was done at the Lake Lynn facility. In conjunction with NIOSH engineers, the Bureau of Deep Mine Safety participated in that testing. So I was aware of the technology.

Senator KENNEDY. How many mines after—did you implement that?

Mr. STICKLER. Well, unfortunately, Senator, in the State of Pennsylvania, the Bureau of Deep Mine Safety has no rulemaking or promulgation of rules, no authority in that area. And the only way that I could get new technology into the mines would be as part of a plan. If an operator was submitting a plan for perhaps a waiver or variance, then I could improve technology in those requirements. But as far as making rules, I had no authority to do that.

Senator KENNEDY. Well, given where the 1977 act's Section 316, talking about the areas of safety, which are completely discretionary with the Secretary, it talks about telephone-equal two-way communications approved by the Secretary shall be provided between surface and each landing, main shaft, slope, surfaces of any coal mine more than 100 feet down from the portal.

It is difficult for me to understand. You had the hearings then. You know what was going on in the Willow Creek Mine in Utah. You had the hearings then.

Let me move into another area, that is, with regards to the emergency rescue chambers. All of us want to wait to see what the final results are going to be, but here it is in the 1977 act: The Secretary or an authorized representative of the Secretary may prescribe to any coal mine that rescue chambers, properly sealed, be erected in

the mine to which persons may go in an emergency. This is 1977. Canada implemented it, saving people's lives.

Did you implement or try to get anything like that implemented while you were the head of that division in Pennsylvania?

Mr. STICKLER. I operated under the Pennsylvania Bituminous Coal Mine Act, which is totally different than the Federal Mine Health and Safety Act.

Senator KENNEDY. Would you implement—well, you have studied this act. Don't you think we could go ahead with this? You are up to be the head of this. Wouldn't you believe that given the act itself you would want to move ahead with that?

Mr. STICKLER. Yes, I think there are some mines that the shelter areas, particularly large mines—I have worked in a large underground mine that had an underground shelter with a bore hole going to the surface so that compressed air could be pumped into that shelter area and protect the miners in case there was a fire or explosion. So I am aware of that, and there are applications that I think it would be applicable.

Senator KENNEDY. Well, there is a sense of urgency, Mr. Stickler. You know, we talk about how we have to look over all new kinds of technologies and evaluate them, when we have some that have been tried and tested and have worked and saved people's lives. We want to know if you are going to be implementing this law, when you have these clear provisions, whether you are going to make sure that they do it.

Let me go into this other area, and that is mine rescue teams. The act says that within 180 days after the effective date of the Mine Safety Act of 1977, the Secretary shall publish regulations which will provide that mine rescue teams shall be available for rescue and recovery in each underground coal or other mine in the event of an emergency. That is in the law. That is in the law now.

You recognized this problem with mine safety in your own statement. I have your statement here, Commonwealth of Pennsylvania, talking about membership on mine rescue teams, a very dynamic process, many experienced with mine rescues, retiring, no longer participating. We understand the importance of mine rescue teams. It is in the 1977 law. This is the job you want, you are going to. Are you giving us the assurance that with that kind of language and authority in there you are going to make sure that every mine is going to have a mine rescue team?

Mr. STICKLER. Well, what I did in the State of Pennsylvania—

Senator KENNEDY. Would you now, if you were approved, give us the assurance that you will follow this and have every mine have a mine rescue team, as provided for in this section of the Mine Safety Act?

Mr. STICKLER. No, Senator, I cannot commit to that at this time. My experience, I have had coal mines in the State of Pennsylvania that only had two employees. Now, how is a coal mine with two employees going to have their own mine rescue team? What they did—

Senator KENNEDY. Where are you drawing the line then? I don't want to spend—I am over my time. Where are you going to draw it? At five? Will you give me the assurance that anyone who has five, more than five miners?

Mr. STICKLER. I will give you the assurance that, if I am confirmed, I will study this and I will make the appropriate decision for health and safety.

Senator KENNEDY. Well, given what we have seen in the recent times and days, the specific requirements under the law and the safety provisions that we have been exposed to, not to have someone that is going to chair this with the specific kinds of opportunities and requirements under the law and say you are going to study it more doesn't give me a great deal of satisfaction. I don't know whether I am missing something. I don't want to be unfair to you. But this is tough business.

Mr. STICKLER. I think there are other ways to do mine rescue other than requiring—

Senator KENNEDY. I am not asking whether you think there are others and I hope you will do it. I am just asking whether you are going to enforce the law that was passed by the Congress and signed by the President.

Mr. STICKLER. Yes, I will enforce—

Senator KENNEDY. Well, that is—and you are going to enforce and make sure, as this law says, within 180 days—we will give you after 180 days that you are in there, would be a lot, we will publish—we will provide mine safety teams available for rescue and recovery to each underground coal mine. That is what the law says. I want to know if you are going to implement it.

Mr. STICKLER. Yes, I will implement the law, and the interpretation of “available” has been within 2 hours of the mine. The rescue station is to be within 2 hours of the mine, is what the current regulation is.

Senator KENNEDY. Well, that is not what the law says. Two hours I am familiar with, and people down there at Sago think that that cost those people's lives on it. And another place is where they have mine rescue teams available, they say—and I do not want to go through the history through West Virginia. So that is something.

My time—could I just ask one further question, Mr. Chairman? This has to do with OSHA. This is the publication of standards. One of the standards that we have had, the final action, the regulatory standards, the final action expected this rule in March. This was a proposed regulation to require employers to pay for safety equipment, such as hard hats and gloves. Paying for this safety equipment is particularly hard on low-income workers, and we have had a regulation that is supposed to be out in March this year. Are you familiar with it?

Mr. FOULKE. I am familiar that there is a regulation, proposed regulation to have employers pay for personal protective equipment, yes, Senator.

Senator KENNEDY. And as I understand it, it is expected due in March this year.

Mr. FOULKE. I am not exactly sure of the date, yes.

Senator KENNEDY. Have you got an opinion about that rule or regulation?

Mr. FOULKE. Senator, I would say I know this is something that has been promulgated before, and actually I think the previous rulemaking had actually talked about having PPE paid for, and

then it was for some reason dropped. I am not sure why. But I know it is currently pending. It is one of the standards that I am going to be looking at, if confirmed, fairly quickly.

I would note, too, though, that there are a lot of PPE—there are also a lot of standards that require employers to provide PPE, and as part of that providing, it is required to be paid for. So at least for certain amounts of personal protective equipment, there is a requirement for it to be paid. But this would, of course, make it across the board.

Senator KENNEDY. Well, it does not sound like you are quite on for that one regulation that I understood was going to be put out in March.

Let me just ask finally, in the safety standards, there are safety standards that have been delayed for years, including the requirement, as I mentioned, personal protective, hexavalent chromium, permissible exposure areas, and on silica. And, in fact, the standard on hexavalent chromium is under court order to be completed. Some of these standards have already gone through the final rule-making process when President Bush took office. That was 5 years ago. We have still not seen these vital safety standards completed. I am going to write to you and ask you what your position is and how we will get those done. And I hope we will get a response.

Mr. FOULKE. I look forward to answering those questions.

Senator KENNEDY. Thank you, and I thank our committee members for their indulgence.

Thank you very much.

The CHAIRMAN. Thank you.

Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Stickler, based on your testimony and your background, you clearly have a good understanding of the technologies that are used in other countries, the technologies that have been proposed in this country. Give us some of your comments about where you think we are going. You heard Mr. Isakson talk to you about oxygen and communication, obviously the two big concerns and the big needs. What can you tell us?

Mr. STICKLER. Well, like I mentioned earlier, I believe the technology did a lot to drive safety during my career, and I credit the Congress for that. They implemented laws that required technology at the time in some cases that had not even been developed. They were stretching the envelope.

Senator DEWINE. But where are we going now, though?

Mr. STICKLER. Well, I think the information that MSHA has sent out to gather information about the mine rescue technology and technology in general, I think that is a good step. I think that needs to be looked at, and from that the game plan would be put together to decide how to advance those technologies that are available that would help improve mine health and safety.

Senator DEWINE. When we had a hearing several weeks ago, the person who is acting in the position that you are proposed to take could not give any real timeline about when that would be. I would hope that if you are confirmed, you would set a very firm timeline for that. Do you think you will be able to do that?

Mr. STICKLER. If I am confirmed, I will look at the schedule and do what I can to move that as quickly as possible.

Senator DEWINE. You know, I think this—

Mr. STICKLER. Once I have established the timeline, which I will do, I will get back to you.

Senator DEWINE. All right. Let me ask you a question, Mr. Foulke. You heard some comments made by Senator Kennedy in his opening comments about the fatality rate in regard to the workplace. Are you familiar with the trend line over the last few years?

Mr. FOULKE. Yes, Senator. I know that this past year there was a slight increase in fatalities.

Senator DEWINE. What do you attribute that to?

Mr. FOULKE. I haven't really reviewed the data, although what preliminarily I have understood it to be is that part of the situation occurs where there has been a fairly extensive increase in construction throughout the country. If I had to guess, I would suspect that that is where the additional amounts have occurred.

Senator DEWINE. Can you give us any general discussion about your philosophy about how you will approach this job?

Mr. FOULKE. One of the things I would really like to do, you know, clearly enforcement is an important issue for them, and we are going to continue that. But I really want to see OSHA become as proactive as possible in order to avoid and eliminate injuries, illnesses, and fatalities. Coming in, like I say, as I indicated earlier, enforcement is an important tool, but a lot of times you are coming in after something has happened. So we have to try to figure out how we can prevent them from ever happening.

Obviously, I think the overall goal of the act is to eliminate that we would never have to do any enforcement because there would be no injuries or illnesses and everyone had a safe workplace. But we need to look at how we can move forward and trying to make sure that all employees, first of all, are in compliance with all the safety and health standards that are applicable to their particular business; but, second, then, to go the next step further because, to tell you the truth, that is just one level. The next level is having a full, comprehensive safety and health program. I think that is where a lot of the compliance assistance, the VPP, the Voluntary Protection Program, all those kind of focus in on trying to push employers or help employers go forward where they have the best of the best safety program in place. And when you have that—and I have worked with a lot of employers in these programs—I found out that what they talk about first when they have a meeting, if you really want to know when employers are really safety and health conscious, it is when they have their senior staff meetings and the first thing they talk about is safety and health—not productivity, not efficiency. Safety. And all that, it is interesting, what flows from it. If we can get that mind-set throughout the country for all employers, we are going to be successful in dramatically reducing injuries, illnesses, and fatalities.

Senator DEWINE. Mr. Stickler, you said in answer to a question from this panel that you did not think any additional laws were needed. That the laws are complied with is what needs to happen. That would indicate that you think clearly sometimes these laws

are not complied with. Does that mean you believe there is some enforcement problem?

Mr. STICKLER. Well, I think there is a compliance problem, and I believe that MSHA is—

Senator DEWINE. Well, does that mean there is an enforcement problem?

Mr. STICKLER. I wouldn't call it an enforcement problem.

Senator DEWINE. Well, what is the difference?

Mr. STICKLER. Well, compliance is when you have operators—in some cases, a small percentage of operators will try to comply with the law when MSHA is at the job site, but that is the only time they try to comply with the law. And that is what I mean by a compliance problem. MSHA enforces the law when they are at the job site, but naturally, MSHA is only at the job site a fraction of the time.

And don't get me wrong, a large percentage of the operators and the people in the industry do try to comply with the law. But I am just talking about a small percentage of people that they will only comply with the law whenever they are forced to.

Senator DEWINE. My time is up. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I would now like to submit the statement of Senator Harkin for the record.

[The prepared statement of Senator Harkin follows:]

PREPARED STATEMENT OF SENATOR HARKIN

Like many Americans, I have been deeply saddened and disturbed by the recent tragedies at the Sago and Aracoma mines in West Virginia. The deaths of the 14 miners who lost their lives in these mines are even more tragic because of the possibility that they could have been prevented with some simple and long-overdue improvements in mine safety regulations and technology.

These tragedies have raised serious questions about mine safety and the effectiveness of the Mine Safety and Health Administration (MSHA) under this administration. Recently, MSHA has suffered from a 1 percent across-the-board slash in funding, resulting in a loss of \$2.8 million that could have been spent on improved air supply equipment, tracking devices which can pinpoint the exact location of trapped miners, and personal emergency devices which broadcast text messages to miners. MSHA has also recently cut 183 staff positions, lessening critical human resources needed to make MSHA more effective at identifying mine safety violations and enforcing the penalties for those violations.

This pattern of weakening the Mine Safety and Health Administration is counterproductive to making the kind of improvements that will enhance and foster greater mine safety.

I also plan to push for expediting the research into two-way technology that would allow communication between miners and rescuers above ground as well as improved air supply technology which would prolong the amount of time miners can be in areas where carbon monoxide levels are high. In addition, I believe that fines for safety and health violations should be increased to a level that will force coal companies to correct them quickly.

Two hundred eight violations in the course of 1 year, at least 40 percent of which were for “serious and substantial” violations, yet the amount of fines levied for these violations amounted to only \$24,374; at the time of the accident only \$14,471 had been paid; the largest single fine for any one violation was only \$440, the specific fine per incidence of having combustible materials was only \$60—these are the 2005 numbers on the Sago mine. After a December 2001 accident in an Alabama mine, initial fines of \$435,000 were reduced to \$3,000. I’m an advocate for increasing fines to levels that would force coal companies to more quickly correct safety and health violations and actually deter lax enforcement of mine safety regulations.

In these times, MSHA, too, needs a strong advocate for miners and their safety, not an advocate for industry who seeks to figure out ways to make enforcement of mine safety and health less onerous for the private companies that operate mines.

The problems with lax enforcement of mine safety regulations that have recently come to light are by no means confined to that segment of occupational safety and health. In the larger OSHA context, 12,800 workers are killed or injured each day on the job. Yet, there are some in Congress proposing legislation that will weaken safety and health protections rather than strengthen them. The sponsors and proponents of this legislation tout them as common sense fixes that will alleviate some regulatory burdens without sacrificing safety and health protections. In fact, enforcement under the Occupational Safety and Health Act is already much weaker than many other safety and health laws, with average penalties of less than \$900 for serious violations that pose a substantial risk of death or serious harm. This is baffling to me. Safe working conditions yield fewer injuries and deaths and increase productivity. It makes little sense to fight compliance with and work against safety regulations. OSHA needs an advocate that will have a hallmark of his leadership, aggressive outreach and education to businesses about how everyone benefits when OSHA regulations are strictly enforced. Again, the administration and the Congress need to be working together to create and increase conditions that will foster better worker safety, public health and environmental safeguards.

The CHAIRMAN. Senator Clinton.

Senator CLINTON. Thank you, Mr. Chairman.

Mr. Chairman, I would ask unanimous consent to submit for the record a letter sent to President Bush from Cecil E. Roberts, the International President of the United Mine Workers of America.

The CHAIRMAN. Without objection.

Senator CLINTON. Thank you.

[The letter follows:]

UNITED MINE WORKERS OF AMERICA,
FAIRFAX, VA 22031,
January 24, 2006.

Hon. GEORGE W. BUSH,
President of the United States of America,
The White House,
1600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20500.

DEAR PRESIDENT BUSH: As President of the United Mine Workers of America, the largest labor union representing coal miners in this country, I respectfully request

that you withdraw the pending nomination of Richard Stickler to serve as Assistant Secretary of Labor for Mine Safety and Health. We urge your immediate attention to this matter as the Senate is scheduled to conduct a hearing on this nomination next Tuesday, January 31.

Mr. Stickler spent the overwhelming part of his career as a coal mine executive. That is the same background that former Assistant Secretary Dave Lauriski brought to the Mine Safety and Health Administration ("MSHA"), with disastrous results. The Nation's miners cannot tolerate having another mine executive running the Agency responsible for protecting their health and safety. For too many years, miners have endured an Agency directed by coal mine executives. Too often these mining executives place a priority on productivity, but fail to focus on miners' health and safety. Too many times MSHA has not done all that it is charged with doing to promote miners' health and safety.

In enacting the Mine Act, Congress made it clear that miners' health and safety is the preeminent priority of MSHA. Indeed, it plainly stated: "Congress declares that the first priority of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." (30 U.S.C. § 801.) We take that admonition seriously. As the most recent coal tragedies—at the Sago Mine and then at the Alma Mine #1—dramatically revealed, coal mining remains terribly dangerous. Miners need someone leading MSHA who makes their health and safety his number one priority.

MSHA's internal analyses repeatedly demonstrate that the Agency is not doing its job well enough. After explosions at a Jim Walters Resources Mine in Alabama killed 13 miners on September 23, 2001, MSHA investigated the company, and it investigated itself. It found both had failed the miners in numerous ways. Yet, MSHA still has not implemented all of its own recommendations. In 2003, the GAO issued a report on MSHA's performance. It, too, found deficiencies in MSHA's performance; today those same problems persist.

As a Nation, we cannot watch as more mines explode, burn, and flood, as they so recently did at Sago, Jim Walters, Quecreek, and Alma. Miners in this country cannot afford to have more mining executives responsible for their health and safety. It is for that reason that I request that you reconsider the nomination of Richard Stickler and withdraw his nomination to be your next Assistant Secretary of Labor for Mine Safety and Health.

Respectfully,

CECIL E. ROBERTS.

Senator CLINTON. Mr. Stickler, in this letter from Mr. Roberts to the President, he makes the point that in enacting the Mine Act, the health and safety of miners was the preeminent priority of MSHA. And we have had since 2001 a number of problems with the attitude by those responsible for enforcing the laws and by the continuing problems that have persisted despite interventions and efforts to change direction.

For example, after the explosion at a Jim Walters resources mine in Alabama that killed 13 miners on September 23, 2001, MSHA investigated the company and investigated itself. It found both had failed the miners in numerous ways. Yet MSHA still has not implemented all of its own recommendations. In 2003, the GAO issued a report on MSHA's performance. It, too, found deficiencies in MSHA's performance.

Today, those same problems persist. In its first few years, the Bush administration dropped more than a dozen proposed health and safety regulations left over from the Clinton administration. In fact, since January 2001, Bush political appointees at MSHA have withdrawn or delayed final action on 18 mine safety rules. Three of these rules may have had the potential to speed the rescue and increase the chances of survival of the 14 miners killed in the recent West Virginia disasters.

By contrast, on Monday, January 29th, 72 Canadian potash miners were rescued from an underground fire after being locked down

overnight in airtight chambers packed with enough oxygen, food, and water for several days. The success of this rescue is largely attributed to these chambers, to the extensive training of rescue workers, and uninterrupted communications.

Now, I would assume that based on your own experience—and I read your statement—and obviously your personal relationships with your own family members and others in the mining industry, you care deeply about the health and safety of miners. Is that correct?

Mr. STICKLER. I do.

Senator CLINTON. If confirmed for this position, will you take the actions that have not been taken since 2001, which numerous outside studies as well as GAO study have consistently found are necessary to protect the health and safety of miners in this country?

Mr. STICKLER. Senator, if I am confirmed, I would do an in-depth analysis of the regulations or proposed regulations that were withdrawn, and if some of those can be advanced and justified, then I certainly will do that. I will look at the agency itself to make evaluations where I can improve the overall efficiency and the operation of the agency. I will focus on trying to improve the use of the primary tools—enforcement, technical support, and education and training.

Senator CLINTON. Well, the problem with that answer, Mr. Stickler, which is fine on the face of it, is that we have all of this evidence going back now 5 years that changes need to be made. So you will be coming into a situation where there is congressional study, there is independent study, there is reality-based experience where people in the view of many experts have lost their lives because of failure to enforce existing regulations and improve safety. And it is troubling, I think, to a number of us that once again we are going to be studying what should be self-evident, that we need improvements in order to protect the health and safety of people who work in the mines in this country.

One of the critical duties that you will have is to enforce the safety laws, and that includes citing and fining employers who fail to comply with those laws. And I am very concerned that we have a history under the Bush administration where consistently violations have either been overlooked or the least amount of fines possible have been imposed.

Incredibly, the amount of fines for violations averaged only \$156, and for 89 of the numerous safety violations just in 2005, the penalties were as low as \$60. And I know that the problem is that we need an attitude of enforcement, and although there is a proposal to increase the fines that are available, the problem seems to be that the minimum fines are too low and don't do enough to serve as deterrents.

Will you as Assistant Secretary re-examine the formula, particularly in light of the safety violations at the Sago Mine?

Mr. STICKLER. Yes, I am concerned about ensuring that the penalty fits the severity of the violation, and my opinion is that the penalties should be increased.

Senator CLINTON. Mr. Chairman, my time is up. I have a number of other questions for both Mr. Stickler and Mr. Foulke. If I could just convey those to you by entering them into the record and ask-

ing that the nominees please respond in writing, I would appreciate that.

The CHAIRMAN. Definitely.

We will leave the record open for 10 days so that people can—but I would hope that they would submit the questions quickly so that they have a little bit of time to answer them so that we can get the answers in the record.

Senator CLINTON. Yes.

The CHAIRMAN. I appreciate all the questions that people have asked today, and also, there are several people out in the audience that have helped us. Before we went to the Sago Mine, we got a series of briefings, those of us that were going down, so that we would have a better understanding of what we might see and experience down there. And they were of tremendous help. They helped us a lot with the questions and also understanding some of the answers.

It is my opinion that there are things that can be done to improve the mine safety and that we need to do them, and we need to do them as quickly as possible. They are not things that will come out of the investigation necessarily. We did meet with the families, as we mentioned a number of times, the families and the miners and United Mine Workers, and even the media, and went and visited the mine site. We were not allowed to go in the mine, of course, because that is sealed off pending the investigation. But it was like the story of when someone is having an intense meeting, and somebody runs through and fires a gun a couple of times and runs out, and you start comparing notes on what everybody saw. There was quite a divergence of information from one meeting to the next or even within some of the same meetings.

So, obviously, we need to have some professionalism that can review these things with an eye to the worker and make sure that we make these places as safe as possible. The amount of coal this country is going to need over the next several decades is going to be astonishing. As the amount of oil goes down, we will have to have more coal research and find uses for this tremendous resource that we have in this country.

The county that I come from has more BTUs in coal than Saudi Arabia has in oil, and that is just in the upper layer. We could go down another 400 or 500 feet and hit 3 times as much resource. And that could all be used for some of the energy needs that we have got, but it has to be done safely while we are doing it, and we have to find some new uses for it.

So I will be submitting some questions as well. I have quite a few of them, and with some of the testimony, there are some things that I do want you to expand on, too. And it is not all just on mine safety.

I started working on OSHA before I ever was introduced to some of the complexities of the mine safety laws, and that is definitely an area where I also think that we can make some very significant progress and protect workers from both injuries and deaths. And I intend to do that. I know that you have even testified before, and I have appreciated that testimony in review of some of the things that I have been drafting to see how that fit with your experience.

And I will have questions for both of you. As I mentioned, the record will stay open for another 10 days.

I would ask unanimous consent that letters of support that we have received and will receive become a matter of the record as well.

[The letters follow:]

AMERICAN INDUSTRIAL HYGIENE ASSOCIATION,
FAIRFAX, VA 22031,
October 3, 2005.

Hon. MICHAEL B. ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: The American Industrial Hygiene Association (AIHA), the premier association of occupational and environmental health and safety professionals, wishes to take this opportunity to comment on the confirmation of a new Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA). AIHA, through its 12,000 members, has more than 60 years of commitment to the protection of workers, their community and the environment.

AIHA is pleased to offer our endorsement of Mr. Edwin Foulke, Jr. for the position as Assistant Secretary of Labor for OSHA.

AIHA believes Mr. Foulke is committed to the proposition that OSHA can serve both the objectives of protecting the worker and helping businesses to be profitable—that these objectives are complementary. We also feel he fully understands the overlap and the interaction between the issues of the workplace, the environment and the community.

Mr. Foulke is well known within the occupational health and safety community because of his service on the Occupational Safety and Health Review Commission, where he served from 1990 to 1995; and served as Chairman of the Commission from 1990 to 1994. We are also aware that Mr. Foulke is well respected within the business community and that those representing labor feel he has been “someone who would reach out to different groups.”

His experience with all sectors, including industry and labor, provides essential background and understanding of health and safety issues from many perspectives. We believe the confirmation of Mr. Foulke would assure that worker health and safety would be expertly and effectively implemented. We are also pleased to note Mr. Foulke’s past support for efforts to update Permissible Exposure Limits within OSHA, a view shared by both labor and industry.

The only reservation AIHA might have to this confirmation would be the concern that Mr. Foulke does not bring any “front-line” health and safety experience to the position. As some have said, “the job of OSHA assistant secretary is different from being on the commission.” We are hopeful that Mr. Foulke will reach out to all sectors to better understand the role that OSHA must fulfill if we are to reduce fatalities, injury and illness in the workplace.

If AIHA can be of any assistance to you, please do not hesitate to contact me.

Sincerely,

ROY M. BUCHAN, DR. PH., CIH,
AIHA, President.
STEVEN DAVIS,
AIHA, Executive Director.

AMERICAN SOCIETY OF SAFETY ENGINEERS,
DES PLAINES, IL 60018-2187,
January 27, 2006.

Hon. MICHAEL B. ENZI,
Chairman,
Committee on Health, Education, Labor and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: The 30,000 member safety, health and environmental (SH&E) professionals of the American Society of Safety Engineers (ASSE) are com-

mitted to making sure that Federal occupational safety and health agencies are fully capable of carrying out their responsibilities for protecting this Nation's workers from occupational safety and health risks. When the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) are given the necessary resources and appropriate leadership to carry out their responsibilities, our members are better able to do their work in protecting workers and, most importantly, workers better receive the protections they deserve.

In August last year, ASSE shared with the President, you and other Congressional leaders our concern that the Assistant Secretary of Labor positions at both OSHA and MSHA had remained unfilled for nearly 8 months. Both agencies are staffed with capable and dedicated professionals. But, in any organization, the people who carry out day-to-day responsibilities deserve to know the future direction that only affirmed leadership can provide.

Community seeks agreement in direction. MSHA needs to address asbestos in mining, substance abuse prevention, and diesel particulate matter in mines. OSHA also needs to provide leadership in helping this Nation's businesses maintain their competitiveness by moving forward as soon as possible on global harmonization of hazard communications and by working now on the protections that may be needed to address risks from nanotechnology, which offers a unique opportunity to address risks before they happen.

The leadership opportunities for Mr. Foulke and Mr. Stickler are many. As they begin to address those opportunities, we urge them to keep in mind that ASSE's 30,000 members have expertise and experience in every industry and across the spectrum of safety and health issues that has already proven useful in our alliance relationships with OSHA and MSHA.

If ASSE can be of any assistance to the committee as it considers these nominations, we ask that you would call on us. Our hope is that the committee's deliberations will be thoughtful but speedy given the length of time the leadership positions at these vitally important agencies have remained unfilled.

Sincerely,

JACK H. DOBSON, JR., CSP,
President.

BE&K, INC.,
BIRMINGHAM, AL 35243,
October 31, 2005.

Hon. MIKE ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR SENATOR ENZI: We heartily endorse the nomination of Edwin G. Foulke, Jr. as the Assistant Secretary of Labor for Occupational Safety and Health.

Our endorsement of Mr. Foulke, the former Chairman of the Occupational Safety and Health Review Commission (OSHRC), and partner in the law firm of Jackson Lewis LLP has been carefully considered and is not lightly given. Mr. Foulke has been known to us for 7 years and has worked closely with BE&K to resolve key safety and health issues. We are very aware of his active involvement in occupational safety and health matters. His reputation is impeccable.

We firmly believe that Mr. Foulke's lifelong commitment to the safety and health of workers, both in construction and general industry, along with his extensive background in the legal profession, successful policy reviews and a history of achievement in several leadership positions makes him the ideal head of OSHA.

BE&K recognizes the need for strong leadership in an area that is critical to the safety and well being of employees. Mr. Foulke has proven to us that he can take the right course of action, one that is fair to both workers and management.

We fully support Edwin G. Foulke, Jr. for the position of Assistant Secretary of Labor for Occupational Safety and Health and feel strongly that he will bring effective leadership to the Occupational Safety and Health Administration.

Sincerely,

MIKE GOODRICH,
BE&K, Chairman and CEO.

GREATER PHILADELPHIA CHAMBER OF COMMERCE,
 PHILADELPHIA, PA 19102-3866,
January 30, 2006.

Hon. ELAINE L. CHAO,
Secretary of Labor,
U.S. Department of Labor,
Washington, D.C. 20210.

DEAR MADAM SECRETARY: I am delighted to write to you and share my unequivocal and enthusiastic endorsement of Richard Stickler and his nomination as U.S. Assistant Secretary of Labor for Mine Safety and Health. As we all know, the recent mining tragedies in West Virginia underscore the need to continue efforts to increase the safety of our miners.

It is my belief the mining community has a tremendous ally in Mr. Stickler. During my time as governor of the Commonwealth of Pennsylvania, I was fortunate to have him by my side during a 77-hour rescue effort of nine miners trapped in Quecreek, Somerset County. His experience and tremendous understanding of the subtleties involved with working underground made him a valuable advisor to me.

Many have called the events at Quecreek a miracle, but that miracle was made possible through the work of our team of mine experts. Without hesitation, I would place Mr. Stickler at the top of that figurative list of experts. At several points during the rescue, he provided the keen insight we needed to make life-saving decisions that were critical to the success of our rescue operation.

Indeed, my administration and all Pennsylvania miners, were fortunate to have his services. For that reason, and many others, I believe Richard Stickler would be an excellent addition to your team of leaders and Government executives.

In closing, if questions later arise, please feel free to contact me. Thank you.
 Sincerely,

MARK S. SCHWEIKER,
President & CEO.

GARBER & ASSOCIATES,
 LANSDALE, PA 19446,
November 10, 2005.

Hon. MIKE B. ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: As a practicing safety professional with over 15 years of field experience, I wanted to take the opportunity to comment on President Bush's nomination of Mr. Edwin G. Foulke, Jr. for the position of Assistant Secretary of Labor for the Occupational Safety and Health Administration. My career has been spent actively working on the front lines of business and industry with the chief aim to ensure that workers are adequately protected in the workplace from injuries and illnesses through effective adherence to applicable OSHA regulations, safety and health management systems, and by counseling organizations on the importance of safety in the workplace toward sound business practices. It is this experience that permits me to make many observations as they relate to the importance of OSHA and its leader.

I support the nomination of Mr. Edwin G. Foulke, Jr. for the position of Assistant Secretary of Labor for the Occupational Safety and Health Administration. In his service on the Occupational Safety and Health Review Commission (OSHRC), Mr. Foulke demonstrated a balanced approach toward various industry groups in his review of the safety and health issues set before him. Mr. Foulke is well respected in his profession and for his dedication toward advancing the mission of OSHA. He brings a wealth of experience and will do what is right. My professional practice has included involvement with OSHA on many occasions and I believe that Mr. Foulke would be an asset to the Occupational Safety and Health Administration.

In my work with the Society for Human Resource Management, it has been my privilege to serve with Mr. Foulke on a National Workplace Health, Safety and Security Committee and more recently on the Workplace Health, Safety and Security Expertise Panel. It has been through my experience in working with Mr. Foulke that I have come to further respect his knowledge and understanding of the front line safety and health issues facing American workers and American business. If there is any one significant matter that I can convey to you leading into the con-

firmation process, it is that I firmly believe that Mr. Foulke clearly understands front line safety and health, an issue that many have criticized Mr. Foulke for lacking. I can tell you from working with Mr. Foulke that he has a firm understanding of front line safety issues and will bring strong leadership toward advancing the strategic management plan of OSHA.

Mr. Foulke will make an excellent Assistant Secretary of Labor for the Occupational Safety and Health Administration. He is well qualified for the position and will serve to protect American workers and American business.

If I can be of assistance to you, please do not hesitate to call.

Sincerely,

JOHN E. GARBER, JR., MS, CSP, SPHR,
Garber & Associates, President.

SOCIETY FOR HUMAN RESOURCE MANAGEMENT,
ALEXANDRIA, VA 22314-3499,
November 15, 2005.

Hon. MIKE ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

Hon. EDWARD KENNEDY,
Ranking Member,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI AND RANKING MEMBER KENNEDY: The position of Assistant Secretary for Occupational Safety and Health Administration (OSHA) has been vacant since January 2005. The nomination for this position has been pending since September 15, 2005. Given the importance of the OSHA to the American workplace, as well as the health and safety issues resulting from Hurricane Katrina, the Society for Human Resource Management (SHRM) requests that the committee act immediately to fill the position before Congress adjourns for this session.

Edwin G. Foulke, Jr., the nominee for this position, has a very accomplished background in occupational health and safety issues. Mr. Foulke has over 20 years of experience in OSHA matters, including inspections, compliance strategies, and rule-making. Mr. Foulke has also served previously as Chairman of the Occupational Safety and Health Review Commission, where he decided hundreds of cases during a period of critical debate over OSHA's role in protecting the American workplace. SHRM believes that Mr. Foulke would make an excellent Assistant Secretary for OSHA, and fully supports his confirmation.

SHRM is the world's largest association devoted to human resource management. Representing more than 200,000 individual members, the Society's mission is both to serve human resource management professionals and to advance the profession. Founded in 1948, SHRM currently has more than 550 affiliated chapters and members in more than 100 countries. Because HR professionals play a critical role in ensuring safe workplaces, SHRM has a strong interest in seeing that this position is filled in an expeditious manner.

Sincerely,

SUSAN R. MEISINGER, SPHR,
President and Chief Executive Officer.

LENDING TREE,
CHARLOTTE, NC 28277,
November 28, 2005.

Hon. MIKE ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: Please accept this letter as my support for Edwin G. Foulke, Jr. as a nominee for the Assistant Secretary of Labor for Occupational Safety and Health.

As the Chair of the Society for Human Resource Management (SHRM), the world's largest professional human resources organization, representing over 205,000 members in over 100 countries, I can tell you Mr. Foulke has earned the respect and trust of SHRM members throughout the country. Not only is he a knowledgeable, hardworking, and insightful practitioner, but he has exceptional leadership skills. Most importantly, he is a fair and just professional that is steadfast in protecting the safety and well-being of workers.

Edwin G. Foulke, Jr. believes in the mission of the Agency to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health.

In the event you would like to discuss my support of Mr. Foulke's candidacy for Assistant Secretary of Labor for Occupational Safety and Health, please contact me. Thanks in advance for your time and consideration.

Sincerely,

JOHNNY C. TAYLOR, JR., J.D., SPHR,
Senior Vice President, Human Resources.

MRS. CATHY D. MUELLER,
EDWARDSVILLE, IL 62025,
November 7, 2005.

Hon. MIKE ENZI,
*Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.*

DEAR CHAIRMAN ENZI: It is with high honor and respect that I am writing you recommending Mr. Edwin G. Foulke, Jr. for the position of Assistant Secretary of Labor—OSHA.

Actively working as a manager in the profession of Safety and Health for nearly 30 years in the aerospace, primary metals manufacturing, and insurance sectors, I am familiar with OSHA, its history, and requirements. Mr. Foulke is an excellent choice to provide leadership and direction to the Agency.

Knowing Mr. Foulke for almost 10 years in a volunteer capacity as a member and past chair of the Workplace Health, Safety, and Security Committee for the Society for Human Resource Management (SHRM) has been my good fortune. Mr. Foulke's leadership ability and his first hand knowledge of OSHA and the Occupational Safety and Health Review Commission (OSHRC) have been invaluable to our group's mission.

My interactions with Mr. Foulke, in both committee and professional capacities, have been outstanding. I have found him to be insightful in his understanding of OSHA and OSHRC, and value his legal opinions. His great knowledge of OSHA and legal issues will be crucial to the operation of the Agency.

I feel Mr. Foulke will make decisions that are in the best interest of the safety and health of our Nations workforce.

Thank you, Senator Enzi, for allowing me the opportunity to provide a recommendation for Mr. Foulke.

Sincerely,

CATHY D. MUELLER.

NATIONAL ROOFING CONTRACTORS ASSOCIATION,
ROSEMONT, IL 60018,
November 10, 2005.

Hon. MIKE ENZI,
*Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.*

DEAR CHAIRMAN ENZI: On behalf of the National Roofing Contractors Association (NRCA), it is my pleasure to write to you in support of the nomination of Edwin G. Foulke, Jr. for Assistant Secretary of Labor, Occupational Safety and Health Administration (OSHA). We have known Mr. Foulke for 14 years and he will do an excellent job reaching out to all stakeholders to seek improvements in workplace safety.

We first met Mr. Foulke when he was Chairman of the Occupational Safety and Health Review Commission (OSHRC) in the administration of former President George Herbert Walker Bush. He spoke at our national convention in 1992 and patiently handled many complicated questions covering a broad range of safety issues.

Mr. Foulke is currently with the law firm of Jackson Lewis LLP and we have continued to work together as members of the Labor Relations Committee of the U.S. Chamber of Commerce. Mr. Foulke is a dedicated professional who co-chairs his firm's OSHA Practice Group and has testified before Congress on behalf of the Chamber.

NRCA is an association of roofing, roof deck and waterproofing contractors. Founded in 1886, it is one of the oldest associations in the construction industry with 5,000 members throughout all 50 states. We urge your support for Mr. Foulke's confirmation.

Sincerely,

WILLIAM A. GOOD, CAE,
Executive Vice President.

SCHOTTENSTEIN ZOX & DUNN,
COLUMBUS, OH 43215,
October 28, 2005.

Hon. MIKE ENZI,
Chairman,
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: I have had the pleasure of knowing and working with Edwin G. Foulke, Jr. since his term as Chairman of the Occupational Safety and Health Review Commission. During his tenure at OSHRC, I served as the American Bar Association's Management chairperson of its Occupational Safety and Health Law Committee. In that role, I worked with Mr. Foulke and my union-side co-chair, Don Elisberg, in assisting in Mr. Foulke's organization of annual conferences for Review Commission judges that presented balanced views to the judges on developments in the law. Mr. Foulke's tenure as Review Commission chairperson demonstrated his significant administrative abilities as well as his knowledge of the law of occupational safety and health. Since his service, I have followed his professional representation of clients before OSHA and OSHRC.

I completely support Mr. Foulke's nomination to head the Occupational Safety and Health Administration as the Assistant Secretary of Labor. He will, I am certain, provide excellent leadership and service in this role. Should you or your staff have any inquiries concerning my support, please do not hesitate to contact me.

Very truly yours,

FELIX C. WADE.

TREE CARE INDUSTRY ASSOCIATION,
MANCHESTER, NH 03103,
February 9, 2006.

Hon. MICHAEL B. ENZI,
Chairman,
Committee Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, D.C. 20510.

DEAR CHAIRMAN ENZI: I write on behalf of the Tree Care Industry Association (TCIA, formerly the National Arborist Association) in support of Edwin G. Foulke's nomination to the position of Assistant Secretary of Labor for the Occupational Safety and Health Administration and to urge that the committee move expeditiously to schedule a vote on his nomination. I also would like to take this opportunity to thank the chairman for holding a hearing on Mr. Foulke's nomination and for all important work on safety and health issues you have done in your current position as well as previous role as chair of the Subcommittee on Employment and Workplace Safety.

TCIA is a 68 year-old trade association representing more than 2,000 commercial tree care companies and their affiliates. Our membership is comprised of arborists engaged in residential and commercial tree trimming, as well as line clearance tree

trimmers, who trim trees proximate to overhead wires for their utility company customers.

TCIA is the leading advocate for safety in the industry and has a history of working cooperatively with OSHA, its State counterparts and other stakeholders on developing standards and educational programs that improve safety for arborists. In fact, we recently instituted the industry's first safety certification program—The Certified Treecare Safety Professional (CTSP).

We strongly support the President's nomination of Mr. Foulke to head OSHA. His record on the Occupational Health and Safety Review Commission as well as his long history assisting companies in developing safety programs as a private attorney speaks to his dedication to safety and understanding of the challenges in implementing effective workplace programs. We look forward to working with Mr. Foulke if he is confirmed and ask the committee to move quickly to schedule a vote and complete the next step in filling this critical position.

Again, thank you for all your work on these important issues.

Respectfully,

CYNTHIA MILLS, CAE,
President.

The CHAIRMAN. With that, I will adjourn the hearing.
[Additional material follows.]

ADDITIONAL MATERIAL

RESPONSE TO QUESTIONS OF SENATOR ENZI BY EDWIN G. FOULKE, JR.

Question 1. You have been practicing labor law for over 20 years, almost as long as OSHA has been in existence. Based on your experience, what are the most effective ways OSHA and its State plan partners can increase workplace safety?

Answer 1. Outreach and assistance to small employers is critical if there is to be substantial improvement in worker safety and health in America. Having worked with many small family operated businesses, I know their desire to have safe workplaces but the same solutions will not work for all types and sizes of employers. Outreach and technical assistance, however, must be part of a comprehensive program that includes strong enforcement.

Question 2. You were chairman of the Occupational Safety and Health Commission, which adjudicated appeals to OSHA enforcement actions, for 5 years, from 1990 to 1995. What did you learn from that experience and how will it inform your leadership of OSHA?

Answer 2. At the Review Commission, I found that the more input I received, the better the decisions I made. In addition, it is important to have measurements in place to determine if progress is being made towards the Agency's goals. To do this, I will look to set goals for programs or initiatives that not only are achievable, but also are measured accurately. I also learned that there are at least two sides to every issue and that the law must be applied consistently and fairly in all cases.

Question 3. OSHA has a very successful track record with cooperative programs. The Voluntary Protection Program (VPP) is OSHA's most successful partnership program. VPP members have injury and illness rates which are more than 50 percent below the averages for their industries. But most of the businesses that are able to participate in VPP are larger businesses. How can we spread the benefits of the VPP program to smaller businesses that care just as much about their employees' safety?

Answer 3. I concur with your sense that VPP has been highly beneficial to participating business and their employees. VPP employers have been proactive about workplace safety plans and workers have benefited. If I am confirmed, I will look for opportunities to allow small businesses to avail themselves of the benefits of cooperative programs.

Question 4. OSHA has a standard requiring clear chemical hazard communication to employees so that they can protect themselves from accidents and mitigate damage if an accident occurs. I have learned both from personal experience and through my prior tenure as subcommittee chairman for the Employment and Workplace Safety that this information is not presented in a way that employees can quickly and easily understand. In fact, I think the problem is so serious that Senator Murray and I, along with Senators Gregg, Sessions, Isakson, and Burr, have introduced legislation requiring OSHA to publish model Material Safety Data Sheets on their Web site for employers to follow. Do you believe making this information available should be a top priority for OSHA?

Answer 4. I would certainly look at the current MSDS requirements to see if they could be streamlined. It is my understanding that OSHA is currently working on 10 model MSDSs. If I am confirmed and if Congress directs OSHA to create model MSDSs, I will do my utmost to ensure that the agency complies with Congress' direction.

Question 5. Drug and alcohol testing for employees working in safety-sensitive transportation positions is currently required by Federal law. With that exception, whether or not to test employees is usually a matter left to the employer, who is well-positioned to determine the risk and, in fact, bears the cost of accidents to employees and others that may be injured. Do you believe that an employer should be allowed to test employees for drug and alcohol use?

Answer 5. Yes, to the extent it is done in a fair and non-discriminatory manner.

Question 6. Do you believe that most employers understand their rights under the Occupational Safety and Health Act? If not, would you support giving employers the right to request a written statement explaining those rights at the closing conference post-inspection? Such a statement would include clear and concise information on the results of inspection, hazards found, citations issued, explanation of employer's right to contest and procedure for doing so, Secretary's responsibility to with regard to penalty review, and additional appeal options.

Answer 6. Firm enforcement has to also be fair enforcement. All employers should be informed about OSHA procedures. The goals should always be compliance with the law and protection for workers. I believe good communication with employers and employees advances those goals.

Question 7. It is my understanding that OSHA's current practice is to waive the 15 day deadline for filing a "notice of contest" of an OSHA citation in cases where an employer missed it by mistake, inadvertence, surprise or excusable neglect. Do you support this interpretation?

Answer 7. Yes.

RESPONSE TO QUESTIONS OF SENATOR ISAKSON BY EDWIN G. FOULKE, JR.

Question 1. As you know, most of today's OSHA regulations were written in the early 1970s. In most instances, they are standards that were written by various standard setting bodies in the 1960s and were incorporated by reference by OSHA during the first several years of the administration's existence. It is my understanding that many of the 1960s standards have been updated by the standards setting bodies to reflect either new technology or re-evaluations of risk, but that OSHA has not acted to reflect these updates in its own regulations. What plan, if any, does OSHA have for updating these regulations?

Answer 1. I am not aware of any specific plans OSHA has for updating consensus standards in the future, though the Agency has done some work in this area in the recent past. If confirmed, I will carefully examine OSHA regulations based on consensus standards to identify where OSHA standards should be brought up to date.

Question 2. OSHA, under Secretary Henshaw, worked to make employers more involved with creating safer management and work practices rather than just using the mentality of enforcement and punishment. Do you see OSHA continuing that practice under your direction?

Answer 2. I think outreach, education, and compliance assistance should and can work hand-in-glove with strong, fair and effective enforcement to improve workplace safety and health. Creating a "safety culture" in management is one of my goals.

Question 3. Partnerships and cooperative programs created by OSHA are an important part of bringing the employer into the safety equation. OSHA had in place a partnership program, the OSHA Strategic Partnership Program for Worker Safety & Health (established in 1998) that had proven successful by a number of participants and had improved the safety performances of those involved. This directive was changed in February 2005 and many in the construction industry feel that these partnership programs are no longer viable ways to work with OSHA. The success of the past OSHA partnerships was based between local area offices and the businesses in their jurisdiction. Under the new directive, reporting requirements are to the national office which has caused excessive amounts of paperwork and an inconsistent level of information which in turn has created a disinterest in partnership programs. How would you improve the current partnerships and cooperative programs within OSHA, specifically for the construction industry?

Answer 3. If I am confirmed, I will examine all of OSHA's cooperative programs to ensure their effectiveness and their accessibility to all employers.

Question 4. What role does technical feasibility play in OSHA's rulemaking procedures? If stakeholders determine that a particular rule is, in their opinion, nearly impossible to implement, how does OSHA take that into consideration?

Answer 4. Under the OSH Act, the agency is required to write and enforce regulations that offer the maximum level of protection for workers that is technologically and economically feasible. Technical and economic feasibility of a proposed rule is one of the issues stakeholders are asked to comment on in the rulemaking process, and rulemaking agencies are required to carefully analyze these comments in considering rulemaking.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY EDWIN G. FOULKE, JR.

Question 1. As Assistant Secretary, it would be your role to show leadership in promoting the development of safety standards. What standards do you think most urgently need to be addressed? What timeline would you give us for addressing them?

Answer 1. If confirmed, I will examine OSHA's regulatory program to identify opportunities to improve worker protections. I would look at the hazards that cause the most injuries. Are injuries occurring because standards are unclear or outdated?

Are there new industrial processes or machines that have caused a significant number of injuries? If I find this to be the case, I will work to address the situation.

Question 2. Today's workers are exposed to many chemicals and toxins that did not exist when the OSH Act was passed in 1974. Yet Permissible Exposure Limits (PELs) have not been updated to reflect these developments in technology. You have previously testified before the House Education and Workforce Committee about the need to address this problem and you proposed different approaches toward setting permissible exposure limits, such as establishing a streamlined process or new statutory mechanism, or setting up a specialized task force. As Assistant Secretary what would you do to set standards for PELs quickly and efficiently? What timeline will you set for proposing a new process?

Answer 2. As you know, I have in the past supported efforts to update PELs, particularly where there is consensus among stakeholders to do so. If I am confirmed, I will carefully examine this issue to improve protections for workers.

Question 3. Our Nation is increasingly concerned with the problem of highly transmittable diseases, like Avian Flu. We have already had 83 deaths and 153 cases in Southeast and Central Asia. As we saw with SARS, healthcare workers are on the front lines in any infectious outbreak. Worker protection needs to be part of any coordinated response to a pandemic outbreak. Yet thus far the Department of Labor has only issued non-binding safety and health bulletins and guidance on the dangers to poultry and healthcare workers.

The Department of Labor's Web site references CDC guidance on the need for individual fitted respirators to protect workers from airborne diseases. Would you support such requirements to protect all healthcare workers against the spread of airborne diseases, including the flu and SARS?

Answer 3. Employers should always be encouraged to provide the greatest possible protection for their employees from workplace hazards. I support OSHA's General Respirator standard and fit testing requirements. I certainly intend to learn more about the avian flu, and if confirmed I will seek input from all stakeholders in determining what action OSHA should take.

Question 3a. What in your view is OSHA's responsibility to protect healthcare workers and other first responders from pandemic flu and, as Assistant Secretary of OSHA, what specific steps would you take to ensure that these workers are protected in the event of a pandemic? Do you have plans for the issuance of safety standards that OSHA would follow in the event of a pandemic?

Answer 3a. If confirmed, I will carefully examine OSHA's response to pandemic flu, consult with the Centers for Disease Control, and recommend whatever actions are necessary to protect workers.

Question 4. From fiscal year 2000 to fiscal year 2004 the average dollar amount of OSHA penalties has dropped by nearly 15 percent, and the average penalty for willful violations has dropped from over \$36,000 in fiscal year 2000 to under \$30,000 in fiscal year 2004. The average number of hours spent on safety inspections has also decreased. And, a recent series in the Kansas City Star described multiple cases of reductions in penalties to the point where, in half of the cases where workers were injured or killed, employers paid less than \$3,000 in fines.

These numbers have real consequences for workers and their families. As a recent letter from Michelle Lewis, whose father-in-law, Mike, was killed in a trench cave-in, said: "OSHA cited Mike's employer, B&B Plumbing, with five violations. The nine-foot trench was not inspected or secured properly before Mike and others were sent into it. No sloping, shoring or shielding was provided, which is required by OSHA for any trench deeper than five feet. B&B was fined \$21,000 by Federal officials. Is this a serious consequence? Will this help employers learn to protect their employees from harm? When thinking about my family's loss, this fine seems disproportionate and absurdly inadequate, but nothing can bring Mike back to us. Our pain will never go away; neither will the images of Mike's death that haunt us. I can only hope that people will learn from Mike's death and will take every measure imaginable to ensure the safety of workers."

I have attached the remainder of Ms. Lewis' letter. President Bush has supported increasing penalties for mine safety violations. What is your position on increasing penalties under the OSH Act? What would you do as Assistant Secretary to review OSHA's approach to citations and to ensure that full penalties are imposed on companies when workers are killed because of companies' violations of safety laws?

Answer 4. OSHA recently imposed a record total of \$21 million in civil money penalties in a single case against BP in connection with the explosion at the company's Texas City refinery. OSHA has the capability to issue large penalties when jus-

tified, and I would continue to exercise OSHA's ability to assess high penalties for egregious violations of the OSH Act.

Question 4a. In many cases, there is no criminal prosecution of companies and employers whose willful negligence leads to workers' deaths, because criminal penalties under OSHA for causing the death of a worker are a maximum of 6 months, or 1 year in the case of a repeat offense. Do you believe these penalties should be increased? Would you support legislation to increase them?

Answer 4a. If confirmed, I would work with the DOL Solicitor to refer particularly egregious cases for criminal prosecution by the Department of Justice. I would have to review the current cases to see if the current criminal penalties need to be increased.

Question 5. During the first Bush administration, the Labor Department adopted a policy for issuing substantially higher penalties for egregious violations of the OSH Act. The Department would issue citations and penalties for each separate instance of a violation, or each employee exposed to the hazard. In 1995, you were part of two opinions by the Occupational Safety Health and Review Commission (OSHRC) that rejected this policy. In Arcadian Corporation and Hartford Roofing, the Commission ruled that the Secretary could not fine companies for each separate violation or for each worker put at risk. I believe the Secretary's ability to impose multiple citations is an important tool of OSHA enforcement. What do you think needs to be done to preserve this approach and, if confirmed, what steps would you take to preserve this policy for egregious violations?

Answer 5. While at Review Commission, we issued several decisions upholding OSHA's egregious policy. If confirmed, I would not hesitate to utilize the egregious policy in appropriate cases.

Question 6. Ergonomics is the number one worker safety problem in America today. These injuries account for more than one-third of all workplace injuries that result in days away from work. In 2002, the Department of Labor announced a "Comprehensive Plan" to address ergonomic issues. Under this plan, however, the Department has only issued three sets of voluntary industry guidelines, the last of which was completed in March 2004. For what industries do you think ergonomic guidelines should be developed? When will you propose and plan to finalize these guidelines if confirmed?

Answer 6. Many stakeholders have worked with OSHA to develop ergonomics guidelines; others have chosen to develop their own independently. If confirmed, I will direct the Agency to work with any stakeholders who wish to develop ergonomic guidelines.

Question 7. The Department pledged that as part of its comprehensive ergonomic plan it would enforce the general duty of employers under the OSH Act to provide a safe workplace—which includes preventing ergonomic injuries. Yet this Department of Labor has only issued 17 ergonomic citations since 2001. And enforcement has tapered off drastically—with 12 citations issued in 2003, only 4 in 2004, and one in 2005. Would you agree that OSHA has a responsibility and the authority to enforce standards against ergonomic hazards through the use of the general duty clause? What are your plans to increase OSHA's enforcement efforts to address ergonomic hazards?

Answer 7. OSHA has a clear responsibility to enforce the General Duty Clause of the OSH Act. If confirmed, I will continue to cite employers for ergonomic hazards where action is warranted and the OSH Act Section 5(a)(1) criteria can be met.

Question 8. One of the duties of the Assistant Secretary is to protect our Nation's most vulnerable workers. This includes immigrant and minority workers. I know that the Department of Labor has an outreach initiative to immigrant workers, and I applaud its decision to make Spanish-language safety materials available to workers. However, I am concerned that this is simply not enough. In 2004, the most recent year for which we have data available, the number and rate of fatal work injuries for Latino workers increased sharply. And the fatality rate among foreign-born workers continues to be much higher than the national average.

Given the growing role of these workers in our workforce, this trend is troubling. It not only highlights failures in our safety system and added burdens to our health system—it also places all workers at risk. In light of these statistics, what steps would you take as the head of OSHA to reduce this trend? What regulatory initiatives would you propose? How would you ensure that these workers have personal protective equipment and the safety training that they need?

Answer 8. OSHA has already undertaken significant efforts to reach out to Hispanic workers. I support that initiative. If confirmed, I will examine the Agency's efforts to protect Hispanic workers, and look for ways to improve this outreach. I would also note that OSHA regulations in general require employers to assess the nature of hazards their employees face and ensure their employees are using appropriate PPE to protect them from those hazards. Many OSHA standards require the use of specific PPE in specific situations. I am aware that OSHA is considering a PPE requirement. If confirmed, I will review the rulemaking record on this proposal.

Question 9. A critical part of improving immigrant worker safety is to ensure that they report unsafe working conditions to OSHA. However, last year U.S. Immigration and Customs Enforcement agents in North Carolina posed as OSHA workers and conducted a "sting" operation to lure workers to a safety training. The ICE agents then arrested the workers and initiated deportation proceedings against them. Although Secretary Chao has condemned this action, ICE recently announced their intention to continue the practice. What would you do as Assistant Secretary to ensure that such operations do not happen again? What would you do to counteract the damage to OSHA's credibility and to establish OSHA as an Agency that will fight to protect immigrant workers?

Answer 9. If confirmed, I will do everything in my power to prevent the use of safety-related "sting" operations. Secretary Chao has been very clear that the Department of Labor does not support safety-related "sting" operations. If confirmed I will use the authority granted to me by the OSH Act to protect all workers.

I will continue and try to improve upon OSHA's outreach to immigrant communities and vigorously enforce the OSH Act.

Question 10. At your hearing you said "outreach to small business" would be one of your priorities. In your testimony you refer to both enforcement and standards as being critical to the mission of OSHA, yet you did not discuss either of these priorities in that testimony or in your statements before the committee. Do you think that outreach to small business is more important than these other priorities—more important than protecting vulnerable workers or ensuring adequate worker training? Can you identify your other priorities?

Answer 10. I do not believe these are mutually exclusive methods for protecting workers. I believe outreach, education, and compliance assistance should and can work hand-in-glove with strong, fair, and effective enforcement to improve workplace safety and health.

Question 11. When asked about enforcement, you spoke about the need to focus on preventing injuries and illnesses before they occur. How do you plan to accomplish this? Under President Clinton, OSHA worked on a safety and health program rule, which would have required employers to have a safety and health program for identifying and correcting hazards. Would you support such a rule?

Answer 11. Outreach, education and compliance assistance are the most effective means to prevent injuries and illnesses before they occur. These are also the most effective means to reach the majority of employers who wish to comply with OSHA standards and protect their workers. Strong, fair and effective enforcement will always be needed to reach the minority of employers who fail to comply with the law and protect their employees.

RESPONSE TO QUESTION OF SENATOR BINGAMAN BY EDWIN G. FOULKE, JR.

Question. There is a longstanding problem of appalling working conditions experienced by migrant laborers that thin brush and plant trees in our Nation's forest. This problem was most recently illustrated in a series of graphic investigative reports in the Sacramento Bee. Given the long history of intermittent attention to this persistent problem, it will take a dedicated and creative effort to develop a lasting solution. In your view, what should OSHA be doing to improve its oversight of and outreach on this issue? Will you commit to work closely with Congress, OSHA's sister agencies in the Department of Labor, the USDA Forest Service, and other relevant agencies to ensure that these workers are adequately trained and to assure their workplace safety and health?

Answer. Yes.

RESPONSE TO QUESTIONS OF SENATOR MURRAY BY EDWIN G. FOULKE, JR.

Question 1. Do you agree that OSHA has a major responsibility to address ergonomics hazards in U.S. workplaces?

Answer 1. Yes.

Question 2. What are your plans to protect workers from ergonomics hazards?

Answer 2. Many stakeholders have worked with OSHA to develop ergonomics guidelines; others have chosen to develop their own independently. If confirmed, I will direct the agency to work with any stakeholders who wish to develop ergonomic guidelines.

OSHA has a clear responsibility to enforce the General Duty Clause. If confirmed, I will continue to cite employers for ergonomic hazards where action is warranted and the OSH Act Section 5(a)(1) criteria can be met.

Question 3. Can you describe some legislative reforms you would like to pursue that would help to improve OSHA's enforcement record, while also reducing the number of injuries and deaths on the job?

Answer 3. I believe OSHA's legal authority is adequate to fulfill its mission of protecting the health and safety of American workers.

Question 4. Do you believe OSHA should seek the authority to impose additional criminal penalties in cases where OSHA has determined that the violation was willful in nature?

Answer 4. If confirmed, I would work with the DOL Solicitor to refer particularly egregious cases for criminal prosecution by the Department of Justice. I would have to review the current cases to see if the current criminal penalties need to be increased.

Question 5. Given the \$1 billion a week that we are spending as a Nation on workplace deaths and injuries, should OSHA be doing more—for instance through increased inspections or enforcement—to help prevent these staggering economic and personal costs to businesses, our economy and of course our workers and their families?

Answer 5. We must vigorously enforce the law. We must inculcate a "culture of safety" among employers through outreach, education, and technical assistance efforts. In addition, we must continue to reach out to workers themselves.

Question 6. If you are confirmed would you reaffirm OSHA's policy expressed in their 1994 asbestos standard requirements that brake mechanics are at risk of asbestos diseases, including cancer from their exposure to asbestos?

Answer 6. If confirmed, I will enforce the current asbestos standard.

Question 7. Do you believe that dust control safeguards and worker education programs are needed—especially given the significant imports of asbestos brake parts into the United States?

Answer 7. If confirmed, I will examine the need for additional training requirements regarding asbestos dust exposure levels.

Question 8. Do you believe that OSHA should propose a ban on the use of asbestos by industry?

Answer 8. It is my understanding that while OSHA has and exercises statutory responsibility to require employers to protect workers from workplace safety and health hazards, OSHA does not have the statutory authority to ban the use of a substance.

Question 9. What regulatory steps and or other actions would you contemplate to encourage the use of substitutes for asbestos in brakes and other uses of asbestos?

Answer 9. It is my understanding that OSHA has and exercises statutory responsibility to require employers to protect workers from workplace safety and health hazards. While I would welcome a substitute for asbestos, OSHA does not have the statutory authority to engage in research or development.

Question 10. Do you believe OSHA should move forward with a warning label survey of asbestos-containing friction products, especially from countries like Mexico, Colombia, China, Canada and Brazil where the volume of export of products that contain asbestos have been rising into the United States?

Answer 10. I am not aware of any warning label survey concerning friction products. If confirmed, I will examine the issue and confer with other Federal agencies that may have a role to play.

Question 11. If confirmed will you support the release of a PPE rule that says employers should pay for protective clothing for their workers while on the job?

Answer 11. If I am confirmed, I will examine the Agency's efforts to protect Hispanic workers, and make any changes I feel are needed. I would also note that OSHA regulations in general require employers to ensure that employers assess the

nature of hazards their employees face and ensure their employees are using appropriate PPE to protect them from those hazards. Many OSHA standards require the use of specific PPE in specific situations. I am aware that OSHA is considering a PPE requirement. If I am confirmed, I will review the rulemaking record on this proposal.

RESPONSE TO QUESTIONS OF SENATOR ENZI BY RICHARD E. STICKLER

Question 1. A 2003 Government Accounting Office report noted that 44 percent of MSHA inspection personnel would be eligible for retirement in the next 5 years. If confirmed, how would you propose to address the anticipated loss of experienced MSHA personnel?

Answer 1. It is my understanding that MSHA has already initiated vigorous efforts to recruit new staff and already has a substantial supply of candidates who have expressed an interest in working for MSHA. I also understand that MSHA recruitment efforts like local job fairs draw strong interest. I would work to continue these efforts as well as pursue other ideas for attracting qualified applicants for MSHA. I believe strongly that we must encourage a spirit of professionalism and pride in this critical agency.

Question 2. Much like MSHA personnel, the mining workforce itself is aging as well. One frequently quoted estimate is that the average age of current mine workers is 52. What do you believe should be the respective roles of MSHA, State mine safety and training agencies, and the industry in making sure that mining does not suffer an "experience drain," and that we preserve the accumulated knowledge and expertise of the mining workforce?

Answer 2. I believe we can best contribute by improving safety and health. Prospective miners will not choose this occupation if they believe doing so will jeopardize their safety and health. MSHA, the States, operators, miners and other stakeholders must all work together to ensure that new miners are adequately trained. I was recently pleased to see that the Labor Department is supporting coal miner safety and skills training in several States.

Question 3. Do you think that MSHA's post-accident investigatory procedures should be modified; and, if so, how?

Answer 3. MSHA's current investigatory procedures are geared toward finding the root cause of an accident, determining if violations of MSHA regulations contributed to that accident, determining appropriate citations of those violations, and assessing whether any regulatory or policy changes could prevent a similar accident in the future. I believe these are reasonable goals for any accident investigation. At this time, I am not certain that any changes are needed, but I would listen to any comments or suggestions others may have.

Question 4. In the aftermath of the two mine tragedies in West Virginia there has been considerable discussion regarding the use of technology to enhance mine safety, would you share with the committee your views on the importance of safety related technology, the utility of currently available technology, and how, if confirmed, you would insure that the best technology is available to all miners?

Answer 4. It is critically important for MSHA and all agencies responsible for the safety and health of miners to push the implementation of technology that could save miners' lives. As administrator of the Bureau of Deep Mine Safety in Pennsylvania, I worked with the National Institute for Occupational Safety and Health (NIOSH) to test safety technologies in realistic mine settings. I believe the leadership of an organization like BDMS or MSHA must do everything possible to ensure that the most effective currently available safety technology is utilized.

Question 5. Understandably, the recent emphasis has been underground coal mining. MSHA's jurisdiction, however, extends to other mining operations as well, such as surface mining, metal and non-metal. What issues do these different types of operations have in common and what are their differences? How should this be reflected in regulatory efforts?

Answer 5. MSHA's regulations reflect the fact that different types of mining entail different safety and health challenges. This is reflected in the fact that the Agency itself has two major components for enforcement, the Coal Directorate and the Metal/Non-Metal Directorate. The Agency has a distinct body of regulations for each of these major sectors, as well as different regulations to cover the unique hazards associated with surface mining as opposed to underground mining. For example, underground coal mines have critical methane, coal dust and roof control issues and many underground metal and non-metal mines rely on natural ventilation. On the

other hand, in some aspects all types of mining are similar and entail similar hazards like use of heavy equipment operating in a harsh and confined environment. MSHA's regulatory efforts must take account of the similarities and differences between and among the various types of mining to have an effective regulatory regime.

Question 6. As the former head of a State mine safety agency, does MSHA in your view coordinate well with State agencies and what if any changes would you suggest to improve those joint efforts?

Answer 6. As the former head of a State mine safety agency, my relationship with MSHA was positive. I worked closely with MSHA District Managers to complement our efforts, provide consistency, and build team work. If confirmed as head of MSHA I would continue to promote these same positive relationships.

Question 7. Small mines have a unique set of issues and concerns, including the practical difficulties of having rescue teams permanently on site. Does the current system of requiring that a rescue team be on call and able to arrive on site within 2 hours work well enough?

Answer 7. Mines, particularly small ones, tend to be found in rural and remote locations. This can make the kind of specialized response required in an emergency difficult. However, we must do all we can to improve response times. I do support prompt notification of MSHA if there is an accident and a quick response by rescue teams when they are called upon.

RESPONSE TO QUESTION OF SENATOR ISAKSON BY RICHARD E. STICKLER

Question. In 2004, the last year of available statistics, MSHA imposed \$8,450 of fines per coal mine, compared to only \$5,650 per coal mine at the end of the previous administration. In your opinion, does the rise in the number of mine citations mean that American coal mines are getting more dangerous or does it mean that our mines are just being scrutinized that much better?

Answer. The statistics you cite could indicate more efficient and effective enforcement by MSHA or it could indicate that the average mine is larger with more hazards that would be cited in an inspection. Given steadily falling accident and fatality rates in recent years, I do not believe it is indicative of more dangerous mines.

RESPONSE TO QUESTIONS OF SENATOR HATCH BY RICHARD E. STICKLER

Question 1. Mr. Stickler, you have extensive experience in the mining industry spanning 37 years. Can you think of any ways to provide multiple hours of oxygen to miners without introducing a new potentially explosive hazard into the mine environment?

Answer 1. Self-Contained Self-Rescuers (SCSRs) have been found to be a safe and effective way for miners to have breathable air to allow them to escape from a mine when the air in that mine becomes unbreathable. As a coal mine manager, I directed the strategic storage of SCSRs throughout the mine, even though it was not required, for the purpose of helping miners escape in the event of a fire or explosion. This may be a reasonable, readily available way to improve odds of survival for miners in such a situation. However, miners should be thoroughly trained to evacuate the mine unless escape is physically blocked.

Question 2. Are there any Mine Safety and Health Administration (MSHA) certified totally wireless communication systems available for underground mines? Are there any that have been submitted for certification?

Answer 2. I don't know of any wireless two-way communication systems that will allow communication between the surface and underground that are certified and are currently available. There are one-way communication systems that allow messages to be sent from the surface to the underground. These one-way systems have proven to work in some U.S. underground mines.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY RICHARD E. STICKLER

Question 1. Since President Bush took office in 2001, MSHA has removed at least 17 mine safety items from its regulatory agenda, including items on mine rescue teams, breathing devices, escape routes, miner training, and investigation and hearing procedures. What safety standards would you make a priority as Assistant Secretary, by acting upon them during 2006? What timeline would you set for implementing other standards?

Answer 1. If I am confirmed by the Senate, I will reconsider the regulatory proposals withdrawn from the regulatory agenda to determine whether any should be

reinstated. I will also be open to new ideas for improving mine safety and health protections.

Question 2. The Alma Mine fire has focused attention on the use of conveyor belt air to ventilate working areas of the mine. This practice was largely prohibited prior to a 2004 MSHA regulation that allowed the widespread use of such ventilation plans. West Virginia Governor Manchin has called for a prohibition on this practice. Do you intend to rescind the regulations that permit the use of the belt entry air to ventilate mines? If not, why not?

Answer 2. The Alma Mine fire is still under investigation. It is unclear at this point how that fire started. Certainly if it is shown that use of belt air caused the fatalities, I would reevaluate the standard.

Question 3. Exposure to high levels of diesel fumes, such as those experienced by underground miners, greatly increases the risk of heart disease, lung cancer and other serious illnesses. MSHA has a regulation limiting miners' exposure to diesel fumes which was scheduled to take effect in January 2006. However, the Agency has proposed delaying this regulation until 2011. If confirmed as Assistant Secretary, would you fully implement the diesel particulate matter regulation, or would you delay this much needed standard? Why would you choose such delay, in light of the lengthy record of evidence showing the serious health hazards that are engendered in exposure to diesel fumes, particularly at the level that miners are exposed?

Answer 3. I am unfamiliar with the Agency's reasons for this delay. If confirmed, I will review the matter.

Question 4. The Mine Safety and Health Act requires that "mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency," but regulations permit rescue teams to be within 2 hours travel time and to be secured by contract. This interpretation leads to delay in rescue teams' arrival and a lack of rescuers familiar with a mine's layout. As Assistant Secretary would you require onsite mine rescue teams that are familiar with the mine? You expressed concern at the HELP Committee hearing that small mines should not have to comply with such a requirement. What about larger mines, and how large do you believe a mine should be before having to maintain an onsite rescue team?

Answer 4. We must do all we can to improve response times. The feasibility of an on-site mine rescue team would be largely determined by the number of employees at a mine who are willing to volunteer. However, if confirmed, I will examine the feasibility of on-site mine rescue teams and will also closely examine ways that we can improve mine rescue response.

Question 5. In March 2002, as head of the Pennsylvania Bureau of Deep Mine Safety, you stated, "Membership on mine rescue teams has been a very dynamic process with many experienced mine rescue members retiring or no longer participating as team members. This loss of experience and the lack of readily available and interested miners to take their place has been dramatic." What do you plan to do about the "dramatic" loss of experience and availability of mine rescue workers?

Answer 5. Mine rescue teams are voluntary organizations, and they draw their members from the ranks of active miners. Given the mining industry's vastly improved productivity, the pool from which mine rescue teams are drawn is growing smaller. I believe MSHA, industry, and organized labor can work cooperatively to encourage and recruit miners to participate in mine rescue teams. As Director of the Pennsylvania Bureau of Deep Mine Safety I worked hard to promote mine rescue training and preparedness. I attended mine rescue training exercises, where I traveled underground with the State trained teams in smoke filled entries and participated in the evaluation of the teams and new technology for mine rescue. I sponsored and participated in mock mine emergency training exercises where mine rescue teams, mine managers, miners representatives and agency personnel role-played in a rescue plan. I supported and attended local, State and national mine rescue competitions where I communicated and demonstrated how special I believe mine rescue individuals are. All of this helped instill pride and confidence in the mining community and motivated others to participate in mine rescue. As head of MSHA I would continue to promote mine rescue preparedness through commitment and personal example.

Question 6. The Sago and Alma mine tragedies raised concerns about the procedures used in the investigation of mine accidents. The Mine Safety Act permits representatives of the company and the workers to be present during witness interviews, a practice unlike those used in other investigations. How would you ensure

that witnesses feel free to speak candidly? How would you protect witnesses in accident investigations from retaliation?

Answer 6. Protecting the integrity and objectivity of an investigation is extremely important if that investigation is going to determine the root cause of an accident and any violations that may have occurred. I understand that a miner may request a confidential interview, in which case no one other than Agency investigators will be present. I support that right for miners. I would vigorously protect the rights of miners against retaliation as well as do my best to protect the integrity of accident investigations.

Question 7. Communications systems that warn miners or guide them to safety above ground are of critical need. Australia uses Personnel Emergency Devices (PEDs) that allow people outside the mine to send messages to miners deep underground. Only a handful of U.S. mines use them, even though they helped save the lives of 46 miners trapped by fire at the Willow Creek Mine in Utah in 1998. Would you recommend that we require these devices in America's mines?

Answer 7. I would recommend the use of any communication devices in any mine where they can be used safely and effectively. The PEDS device has provided one-way communication from the surface to underground areas in some mines under specific conditions. I understand MSHA has initiated a technical evaluation of existing communications systems to determine their effectiveness and limitations. I would look forward to reviewing the results of this evaluation to see what could be effective and reliable in underground coal mines.

Question 8. Some mines use tracking systems where each miner wears a device that sends signals to computerized beacons placed throughout the mine. As Assistant Secretary, do you think we should require the use of such devices in mines?

Answer 8. I support the development of effective communications technology for use in coal mines. We must recognize the inherent limitations, however, of technology that relies on placement of wires or electronics inside a mine. MSHA has initiated a technical evaluation of existing communication systems to determine their effectiveness and limitations. I would look forward to reviewing the results of this evaluation to see what could be effective and reliable in underground coal mines.

Question 9. When you were Senior Manager of the Eagle's Nest Mine in Van, West Virginia, its injury rate was three times the national average. Three miners died in mines under your supervision, including two at Mine 84 in Pennsylvania. During the time you ran the Marianna Mine, the injury rate rose dramatically and, in 1987, was several times higher than it had been in 1984. Do you think these safety records are indicative of your level of care for miners' safety? How do you explain these fatality and injury rates that were well beyond the national norms?

Answer 9. During my career I managed numerous mining operations. Almost all had very good safety records, and those that didn't had a high accident rate before I was assigned to take over their management. According to MSHA data, injury rates at the mines I managed generally improved during my time as a mine superintendent, and injury rates at those mines compared favorably to those at other underground coal mines in Pennsylvania, where most of the mines I managed were located. The injury statistics at Marianna Mine and at other Pennsylvania underground coal mines increased between 1984 and 1987 due to an MSHA initiative to improve reporting of injuries and accidents. At Eagles Nest, NFDL (non-fatal days lost) rates rose during my first year there due to my policy that accidents be properly reported in accordance with MSHA requirements. However the NFDL rate dropped during my second and final year. MSHA data show a decrease in injury rates at mines regulated by the Pennsylvania Bureau of Deep Mine Safety during my tenure as Director. The fatalities that occurred at Mine 84 are tragic and regrettable, as are all mine fatalities. Mine safety professionals seek to learn from these incidents to avoid them in the future. As I noted at my confirmation hearing, I worked as a rank-and-file miner and served as captain of a mine rescue team. My concern for the safety and health of miners comes from first-hand experience.

Question 10. Reports by MSHA and the Pennsylvania Department of Environment Protection blamed the Quecreek Mine accident on outdated maps, and a Pennsylvania grand jury found that the system of regulating underground coal mines was inadequate and antiquated. Numerous media accounts have indicated that officials long knew that unmapped "mine voids" were a problem. Were you aware of this problem and, if mapping was such a known and serious concern, why didn't you take action to address it?

Answer 10. Voids left by old unmapped mines have long been recognized as a problem. The standard approach of MSHA and Pennsylvania was to require advance

drilling when maps showed that new mining was approaching another underground mine. This requirement recognized the potential inaccuracy in old maps but was obviously insufficient. I took action as Director of BDMS to extend the distance at which drilling was required. If confirmed, I would support continued efforts by MSHA and State agencies to digitize and centralize access to mine maps.

Question 11. While you led the Pennsylvania BDMS, you granted a number of variances to general safety requirements to individual mines. One of the areas in which you did this was with respect to the general requirement that mine conveyor belts be isolated. Didn't this increase the possibility that conveyor belt air could spread fires and hazardous fumes throughout the mine? Can you tell us why you granted such variances?

Answer 11. The Pennsylvania Mine Act does not specifically address the isolation of the belt entry or the use of belt entry air to ventilate the face. Historically many mines did not isolate the belt entry. There had been controversy and inconsistent interpretation of this issue. After I became Director, I issued an interpretation that required mines that did not isolate the belt entry to submit a variance plan which included, among other safety precautions, the use of carbon monoxide monitoring and early warning systems that were not otherwise required by the act. The end result of this process was enhanced safety and protection that a belt entry fire would be detected at the earliest possible time and before a fire could reach a level that would prevent the escape of miners.

Question 12. Budget shortages have contributed to a reduction in the number of professionals dedicated to coal enforcement, which has dropped from 1,233 in 2001 to 1,043 in 2005, a 15 percent reduction. The administration's fiscal year 2007 budget request for coal enforcement under MSHA is still 9 percent below budget levels, adjusted for inflation, at the start of this administration. Do you think that more coal safety enforcement staff is necessary? If so, in what jobs specifically do you plan to add staff?

Answer 12. If I am confirmed, I will carefully examine all aspects of the Agency's operations, including but not limited to staffing in the Coal Directorate, to ensure the agency has adequate resources to carry out its mission.

Question 13. MSHA fined the Jim Walters Mine in Alabama \$435,000 for infractions associated with the explosion and fire that killed 13 miners but, unbelievably, an administrative judge reduced these fines to a mere \$3,000. All too often, MSHA sees penalties reduced through appeals. Are you concerned about the ability of these review commissions to reduce fines in this manner? Do you believe that the Secretary should have the authority to set these fines and make them stick?

Answer 13. I agree that the reduction of the penalty in the case of the JWR accident was not appropriate. I understand that the Department is appealing this reduction.

RESPONSE TO QUESTIONS OF SENATOR CLINTON BY RICHARD E. STICKLER

Question 1. In the past month alone, we have seen two tragedies that have resulted in the deaths of 14 experienced miners. In its first few years, the Bush administration dropped more than a dozen proposed health and safety regulations left over from the Clinton administration. Since January 2001, Bush political appointees at MSHA have withdrawn or delayed final action on 18 mine safety rules. Three of these rules may have had the potential to speed the rescue and increase the chances of survival for the 14 miners killed in the recent West Virginian disasters. Can you tell the committee how you would spearhead efforts to increase safety conditions for our Nation's miners?

Answer 1. If confirmed by the Senate, I would reconsider the regulatory proposals dropped from the regulatory agenda to determine if any should be reinstated.

Question 2. On September 4, 2002, the Bush administration withdrew a Mine Rescue Team regulation specifically aimed at increasing prevention and preparedness. The regulation proposed financial incentives for mine operators to establish two fully trained and equipped mine rescue teams onsite. The stated reason for the withdrawal said, "We have increased the number and improved the quality of the mine rescue teams available to assist miners in life threatening emergencies." MSHA logs show that the first call from the Sago Mine to MSHA personnel at home came at approximately 8:10 a.m and it took 20 minutes to locate a MSHA representative who could respond to the crisis. It took an additional 2 hours for this member to arrive onsite. Given this information, what is your stance on the Federal regulation that allows MRTs to be considered "available" if they are "within 2 hours of

the mine?" Do you think this is appropriate? Do you think the decision to withdraw the regulation I described was appropriate?

Answer 2. I am not familiar with the agency's reasons for withdrawing this agenda item. If confirmed, I will examine ways we can improve mine rescue response. I also believe MSHA should be promptly notified in the event of an accident.

Question 3. In addition to delayed rescue efforts, mine-safety experts have identified inadequate oxygen supplies as a possible factor in the deaths of the 12 miners at Sago. Am I correct that there is currently no MSHA requirement that coal operators store additional oxygen units underground? Do you think there should be one?

Answer 3. As a coal mine manager, I directed the strategic storage of SCSRs for the purpose of improving the odds that miners could have adequate air to escape in the event of a fire or explosion. This may be a reasonable, readily available way to improve odds of survival for miners in such a situation. In addition, we should not lose sight of the primary reason for oxygen units (SCSRs) underground, and that is to escape from the mine in an emergency. This is especially critical in underground coal mines where smoldering fires can produce large amounts of carbon monoxide or following a methane explosion that may generate secondary explosions.

Question 4. Under the Clinton administration, MSHA posted a proposed rule-making regarding revised coal mines standards on self-rescue devices in order to allow miners adequate time escape to the surface or a safe location in case of an emergency. This proposed rulemaking also called for manufacturer expiration dates and periodic inspections to ensure fully functioning SCSRs. The standards were withdrawn in September of 2001, "in light of resource constraint and changing safety and health regulatory priorities." What resource constraints are so great that they inhibit MSHA from providing miners with adequate SCSRs?

Answer 4. I am not familiar with the reasons for its withdrawal. I have recently learned that MSHA is considering an Emergency Temporary Standard on this subject. If confirmed, I will reconsider the proposal and determine if it should be reinstated on the regulatory agenda.

Question 5. Yet another Clinton administration requirement withdrawn by the Bush administration would have required mines to purchase conveyer belts with improved flame test and approval standards after 1 year. This decision directly contradicts a study by the National Institute for Occupational Safety and Health which highlighted the incredible speed of flame propagation on conveyer belts and its critical role in mine fires. Today's only existing standard measures burn time and its outdated. As we now know, the Alma accident occurred when a coal conveyer belt caught fire. Do you support changing these safety standards?

Answer 5. The Alma Mine fire is still under investigation. It is unclear at this point how that fire started. If it is shown that the use of a more fire resistant conveyer belt would have prevented the fire I would, if confirmed, reconsider the issue of requiring improved belting.

Question 6. On Monday, January 29, 72 Canadian potash miners were rescued from an underground fire after being locked down overnight in airtight chambers packed with enough oxygen, food and water for several days. The success of this rescue is largely attributed to these chambers, extensive training of rescue workers and uninterrupted communication. Davitt McAteer, head of the U.S. Mine Safety and Health Administration under former President Bill Clinton, called the Canadian rescue success a, "textbook recovery." According to McAteer, there are no such chambers in U.S. mines, because in the late 1970s, the U.S. Government determined there was no material strong enough to withstand the secondary explosion. Since then, he said, the National Aeronautics and Space Administration and the Defense Department have created stronger materials. Are Mr. McAteer's assertions correct? If NASA and the Department of Defense have created materials that could draw upon the success of this recent Canadian success, would you support constructing similar safety chambers in our mines?

Answer 6. I think refuge chambers can be effectively used and practically employed in many situations and I believe we need to look carefully at expanding their use in this country. I would certainly review the information that NASA and DOD have developed about new materials that increase the feasibility of such chambers.

Question 7. Governor Manchin and the West Virginia State legislature took immediate action to prevent tragedies like Sago from ever happening again. In an overwhelming showing of bi-partisan unity, the legislature unanimously passed legislation, deliberating for just 1 day, to protect workers by improving the safety in WV's mines. This bill takes a number of important steps—it directs the director of Home-

land Security and Emergency Management and the Office of Miners' Health, Safety and Training to create a 24-hour, 7 day-a-week emergency operations center operated by the Division of Emergency Services; it requires mine operators to provide caches of self-rescue devices in mines; it requires each and every miner underground to be equipped with wireless emergency communication devices; and it mandates that miners be equipped with wireless tracking devices capable of providing real-time monitoring of the physical location of each person under ground. The bill also creates felony criminal offenses for removing or tampering with any of the safety devices required as part of the legislation. Officials in Ohio, Utah, Kentucky, Illinois and Pennsylvania are considering similar commonsense safety proposals. Do you support a Federal bill modeled after the West Virginia proposal? If not, what aspects of it do you oppose?

Answer 7. We should ensure that miners have adequate supplies of breathable air to allow them to escape the mine in the event of an accident. As a coal mine manager, I directed the strategic storage of SCRS for the purpose of improving the odds that miners could have adequate air to escape in the event of a fire or explosion. I would also support deployment of any available and effective communication technologies that could improve communication among miners, between miners and the surface, and miners and rescuers. I also support prompt notification of MSHA when there is an accident.

Question 8. Senator Specter held a hearing in his Labor Appropriations Subcommittee in which he said he would fight for Federal legislation that would stiffen penalties against coal operators that violate safety rules and would require that up-to-date safety equipment be placed in mines. Senator Specter also called for an end to a practice in which operators can reduce the fines they pay through an appeals process, and endorsed imposing a fee on coal operators to be used for new safety equipment. Are these ideas that make sense, from your perspective?

Answer 8. The administration has proposed to increase the maximum civil money penalty the Agency may impose to \$220,000 for flagrant violations, and I support this. If I am confirmed, I will do all I can within the Mine Act to ensure that penalties assessed for violations of the Mine Act and MSHA regulations are effective and fairly imposed. I would also review the adequacy and effectiveness of MSHA's current penalty structure. The right to appeal penalties is incorporated in the Mine Act, which is Congress' prerogative to change.

Question 9. MSHA is still using data obtained in 1972 to regulate the maximum levels of substances, such as methane, workers can be exposed to for 8 hour periods even though technology has advanced significantly. Do you support updating this research to ensure that the levels of chemicals American workers are exposed to on a daily basis are safe?

Answer 9. Yes. MSHA regulation and enforcement should always be based on the best available science.

Question 10. Current penalties on mine violations are derived from a formula that considers a number of factors including a mine's financial standing, the number of violations it has incurred, etc. According to the Washington Post: "Two winters ago, what had been a mediocre safety record at West Virginia's Sago Mine grew dramatically worse. Over 23 months beginning in February 2004, two dozen miners were hurt in a string of accidents, some of them caused by rock chunks falling from the mine ceiling. Federal safety inspectors slapped the mine with citations 273 times, or an average of once every 2½ days. Despite this record, the price paid by Sago's operators was light. Government regulators never publicly discussed shutting down the mine and never sought criminal sanctions. The biggest single fine was \$440, about 0.0004 percent of the \$110 million net profit reported last year by the mine's current owner, International Coal Group Inc." Given this abysmal oversight, do you think the formula yields appropriate penalties on mines? Are updates necessary to ensure that penalties serve as effective deterrents in mine maintenance?

Answer 10. The administration has proposed to increase the maximum civil money penalty the Agency may impose to \$220,000 for flagrant violations, and I support this. If I am confirmed, I will do all I can within the Mine Act to ensure that penalties assessed for violations of the Mine Act and MSHA regulations are effective and fairly imposed. I would also undertake a review of the formula for assessing penalties.

Question 11. Much of the focus in the aftermath of the tragedies in Pennsylvania and West Virginia suggest that improved technology could have saved miners' lives. What innovations, in your opinion, are most necessary to implement if you take office?

Answer 11. If I am confirmed, I will do everything in my power to ensure that miners and mine operators have access to and utilize the best and most effective technology available to improve the safety of miners. These may include, but may not be limited to, improvements in breathable air supplies for miners seeking to escape from toxic atmospheres, and improved communications among miners, between miners and rescuers, and between miners and the surface.

Question 12. Current law mandates each miner have two separate means of communication when underground. Despite available text messaging technology that recently saved 45 workers in Utah, most mines criticize this technology as it employs one-way messaging. New walkie talkies are effective for approximately 1,000 feet. This sort of technology could be easily implemented and holds the potential to save lives in the event of an emergency. Why haven't these technologies been given to miners and would you champion a proposal to ensure that they are?

Answer 12. I would support the use of any technology that can effectively improve communications among miners, between miners and rescuers, and between miners and the surface. If confirmed, I would work to develop better communications technology.

RESPONSE TO QUESTION OF SENATOR BINGAMAN BY RICHARD E. STICKLER

Question. Since 1977, the Mine Safety and Health Administration (MSHA) has investigated 21 coal mine disasters claiming 158 lives. I understand that many of these miners were lost because rescue efforts were hampered by cut or burned telephone cables, or trapped miners were unable to reach these telephones. In too many instances, wired telephone systems have contributed significantly to the loss of life, including the recent tragedy at Sago Mine. Current MSHA regulations only require wired telephones or trolley phone facilities. I believe with available technologies, these tragedies could be avoided.

Would you address this issue, and, provide your opinion on whether the Federal Government should mandate the deployment of wireless mine-wide radio communications and tracking systems in each underground mine.

Answer. I intend to support the deployment of technology that can improve communication for underground miners. If such technology exists and is effective, I would support its use and would consider a requirement for it.

RESPONSE TO QUESTIONS OF SENATOR MURRAY BY RICHARD E. STICKLER

Question 1. Can you please comment on whether you think our Federal mine safety laws also need to be swiftly updated to incorporate some of the specific provisions enacted in West Virginia, including improved communication and locator devices for miners, oxygen supply tanks stationed throughout the mine and mine rescue teams that are onsite, as opposed to 2 hours away.

Answer 1. I believe it is appropriate to ensure that miners have adequate supplies of breathable air to allow them to escape hazardous conditions. As a coal mine manager, I directed the strategic storage of SCRS for the purpose of improving the odds that miners could have adequate air to escape in the event of a fire or explosion. I would also support deployment of any available and effective communication technologies that could improve communication among miners, between miners and the surface, and miners and rescuers. And of course, I support measures that would facilitate the earliest possible emergency response such as the prompt notification of MSHA in the event of an accident. If confirmed, I will examine the feasibility of on-site mine rescue teams and will also closely examine ways that we can improve mine rescue response.

Question 2. Do you not think there is any value in amending the law to provide a biting minimum penalty for significant and substantial violations?

Answer 2. The administration has proposed to increase the maximum civil money penalty the Agency may impose to \$220,000 for flagrant violations, and I support this. If I am confirmed, I will do all I can within the Mine Act to ensure that penalties assessed for violations of the Mine Act and MSHA regulations are effective and fairly imposed. I would also review the adequacy and effectiveness of MSHA's current penalty structure.

Question 3. What about for mines with a certain number of withdrawal orders over a period of a year?

Answer 3. If confirmed, I will examine the agency's penalty structure to see if some linkage between closure orders and penalties would be appropriate.

Question 4. How about amending the law to eliminate the discretion of the Agency and the Commission to consider various adjustment factors where the operator has a bad record or where the accident is serious?

Answer 4. As you know, MSHA penalties are assessed using six statutory factors; among these are the operator's history of violations and good faith in correcting hazards. If I am confirmed, I will examine the weight given to these various statutory factors in assessing penalties.

Question 5. What do you think of tightening up the collection requirements so that mine operators are never tempted to become scofflaws?

Answer 5. It is my understanding that MSHA has a regular collection program it uses for operators whose penalties are overdue that follows the procedures under the Debt Collection Act. MSHA recently filed a complaint against several coal mine operators that asks that the operators be enjoined from failing to pay penalties for future violations of the Mine Safety and Health Act and be required to post a bond with the court to guarantee future compliance with the law.

Question 6. It is apparently the legal position of the Department that it can simply drop items on its regulatory agenda without public notice if those items have not yet reached the proposed rule stage? Would you pledge to provide public notice, and a substantive explanation, for any item dropped from the agenda while you are Assistant Secretary?

Answer 6. I am not familiar with the requirements of Federal law with respect to rulemaking processes or setting the regulatory agenda, which I would familiarize myself with if I am confirmed. I would certainly observe all legal requirements for notice and comment.

Question 7. MSHA is currently in the process of gathering information about certain devices used in the United States and other countries to improve the chances of survival of underground miners following an accident. One of these devices is a safety chamber, where the miners can seek refuge until rescue is possible. Although many mines have such devices, and they are considered feasible for underground U.S. coal mines by the mining industry, a senior MSHA official was recently quoted as saying the devices were not suitable for such use. Can you tell this committee whether its seriously looking at requiring U.S. mines to adopt such devices, or has the agency already made up its mind?

Answer 7. I think refuge chambers can be effectively used and practically employed in many situations, and I believe we need to look carefully at expanding their use in this country. I would certainly review the information that NASA and DOD have developed about new materials that increase the feasibility of such chambers.

Question 8. The bill introduced recently by Senator Byrd and Rockefeller provides that MSHA will regularly review its existing regulations to ascertain if they should be updated in light of new technological developments. How often do you think it would be appropriate to conduct such a review?

Answer 8. MSHA regulation and enforcement should always be based on the best available science. I would support periodic reviews of MSHA regulations.

Question 9. Would you pledge to conduct such a review yourself during your first year of office, to give the public an opportunity to participate in such a review, and to notify the public and the Congress of the result?

Answer 9. MSHA would be required to seek stakeholder input in any revision of regulations. If I am confirmed I will ensure that the process is followed. I also believe that the public is a source of ideas. I would welcome constructive suggestions. I would commit to beginning such a review, but finishing it may not be achievable in 1 year.

Question 10. I am greatly troubled by reports that although the Mine Act specifically mandates certain practices, and bans others, that MSHA has ignored those mandates in recent rulemaking actions. It has recently been reported, for example, that the act requires the availability of underground safety chambers, and bans the practice of belt air. Can you comment on these specific assertions, and give this committee your assurances that MSHA will follow the law under your administration?

Answer 10. If I am confirmed, it is my intention to vigorously enforce the Mine Act. As I have mentioned above, I support the use of refuge chambers wherever it is practical to do so. It is my understanding that for many years, MSHA has granted variances to allow the use of belt air, and this is a common practice in mining. I would need to look into the specific question you raise concerning apparent inconsistencies. I assure you that I intend to follow the law.

Question 11. I want to ask you specifically about section 101(a)(9) of the Mine Act. This provision of the law provides that:

“No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.”

It now appears that this administration does not intend to honor this important statutory obligation. In September 2005, MSHA proposed delaying the implementation of an important health standard for 5 full years notwithstanding this provision. In fact, MSHA expressly asserted that delaying implementation for 5 more years would not violate this provision of the statute.

Can you promise this committee that you will uphold the plain meaning of section 101(a)(9) of the Mine Act, and that you will personally revisit the Department’s September 2005 conclusion that a delay in implementing the final limit under this (Diesel Particulate Matter) rule does not violate the act?

Answer 11. I am not familiar with the Agency’s reasons for a 5 year phase-in of the Diesel Particulate Matter rule. If I am confirmed, I will review the issue, including the record of the rule and the arguments both supporting and questioning this action.

Question 12. If your nomination is approved by this committee, will you stop the delays and allow the final (DPM) limit to go into effect to protect the health of miners at all the covered mines?

Answer 12. I am not familiar with the Agency’s reasons for a 5 year phase-in of the Diesel Particulate Matter rule. If I am confirmed, I will review the issue, including the record of the rule and the arguments both supporting and questioning this action.

Question 13. Do you think that if your nomination is approved, you can ensure that MSHA operates in an independent manner, free of inappropriate influence from the mining industry?

Answer 13. If I am confirmed, I pledge to perform my duties at MSHA with honesty and integrity. I served for 6 years as the regulator for the underground mining industry in one of the largest coal mining States in the Nation. I believe that during that time, I conducted the Agency’s affairs with honesty and integrity. I am proud that injury rates fell each year I ran that Agency. I have been retired since 2003 and expect to return to retirement after my service at MSHA.

Question 14. Can you provide me with specific examples of steps you intend to take to reverse the Agency’s recent trend of relying on voluntary compliance with the industry and issuing fewer and less significant fines, without taking any steps toward protecting the health and safety of miners?

Answer 14. As I said at my confirmation, I believe most of the accidents that have occurred in my memory happened because the law and regulations were not followed. That indicates a clear need for strong, fair, and effective enforcement. Strong enforcement can be appropriately supplemented with outreach training and technical assistance. I would use all these tools to prevent violations of the law and regulations and to prevent accidents before they occur. If confirmed, I also plan to review the agency’s penalty and assessment procedures and formula.

QUESTIONS OF SENATOR HARKIN FOR RICHARD E. STICKLER

Question 1. What steps will you take to expedite the research of two-way technology that would allow for communications between miners and rescuers above ground in accident situations?

Question 2. How would you use your platform in this position to influence the improvement of air supply technology that would prolong the amount of time miners can be exposed to high levels of carbon monoxide without suffering debilitating injury or loss of life?

Question 3. As these technologies are developed, how will you push industry to make their use more prevalent?

Question 4. Using the Sago Mine as an example, do you believe the fines companies have been assessed for safety and health violations in the last year have been sufficient to encourage companies to quickly correct those violations and deter them from lax future enforcement of safety regulations?

QUESTIONS OF SENATOR HARKIN FOR EDWIN G. FOULKE, JR.

Question 1. Employer Payment for Personal Protective Equipment—I am concerned over OSHA’s inaction on the regulation concerning Employer Payment for

Personal Protective Equipment (PPE). This rule, undertaken in 1999, makes clear that employers are required to pay for equipment that protects workers from workplace hazards that cannot otherwise be controlled. Although the rule has been ready to go for 5 years, it has not been issued by the Department of Labor. This is especially alarming because the rate of worker deaths and injuries has increased among Hispanic workers who take on a disproportionate number of jobs in the Nation's most dangerous professions, including the construction industry and the meatpacking industry.

The DOL has been asked repeatedly to either issue the standard or explain why they have not. Their latest regulatory agenda (October 2005) states that expected final action will come in March 2006, a date that has been a moving target.

Can we get a commitment from you to look into this situation and remedy it by issuing the standard no later than March 2006? If not, why not?

Question 2. OSHA Outreach—A lot of small business owners don't think that OSHA does apply or should apply to them. They think that OSHA regulations don't apply because there has been a failure to educate them on their responsibilities under this important legislation. They don't think OSHA should apply to them because they don't believe adherence to OSHA is cost-effective or too burdensome.

I would like you to speak to this problem and outline how you will remedy it.

[Whereupon, at 3:30 p.m., the committee was adjourned.]

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