THE S–MINER ACT (H.R. 2768) AND THE MINER HEALTH ENHANCEMENT ACT OF 2007 (H.R. 2769)

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

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THE S–MINER ACT (H.R. 2768) AND THE MINER HEALTH ENHANCEMENT ACT OF 2007 (H.R. 2769)

Thursday, July 26, 2007
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 2:03 p.m., in Room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Payne, Bishop of New York, Hare, Wilson, Price, Kline, and McKeon.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health/Safety Professional; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Senior Policy Advisor for the Subcommittee on Workforce Protections; Michael Gaffin, Staff Assistant, Labor; Peter Galvin, Senior Labor Policy Advisor; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Michele Varnhagen, Labor Policy Director; Mark Zuckerman, Staff Director; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Steve Forde, Minority Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Legislative Assistant; Richard Hoar, Minority Professional Staff Member; Victor Klatt, Minority Staff Director; Jim Paretti, Minority Workforce Policy Counsel; Molly McLaughlin Salmi, Minority Deputy Director of Workforce Policy; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairwoman WOOLSEY [presiding]. A quorum being present, the hearing on the S-MINER Act, H.R. 2768, and the Miner Health Enhancement Act, H.R. 2769, will come to order.

Pursuant to committee rule 12(a), any member may submit an opening statement in writing which will be made part of the permanent record.

I now recognize myself, and I will be followed by Ranking Member Joe Wilson, for opening statements.

I want to thank you all for coming to the H.R. 2768 and H.R. 2769 Miner Health Enhancement Act hearing today. We are going to have votes this afternoon, so we are not going to go on and on.

We are going to listen to you, and then get back to questions and answers. I thank you for coming late in the day. That is not always easy to do.

Our Republican colleagues and the mining industry requested this hearing, and we were happy to accommodate them because all members of the subcommittee are aware that we have held two previous hearing on this important issue, and we have heard not only from miners, we have heard from their families and their representatives, but also from MSHA and the industry.

I have met with industry representatives myself. My staff has been working with the industry, MSHA and other interested parties looking for a consensus on this particular legislation. They are coming to us because the health and safety of our miners are much too important to ignore, and much too important to delay.

I am proud to be a sponsor of H.R. 2768 and H.R. 2769 with Chairman Representative Miller and Representative Rahall from West Virginia, and many members of the subcommittee. This legislation makes it absolutely clear to MSHA what Congress expects that the agency do.

Nearly 40 years ago, Congress passed for the first time the health and safety legislation for miners. While mining is inherently dangerous, we recognized then that there was much government could do to reduce fatalities due to accidents and work-related illnesses such as black lung.

Things have improved over the years, but they have not improved enough. Recently, we had a wakeup call. In the year 2006, there were three serious mine accidents at Sago, Aracoma and Darby, killing 19 miners. By the time 2006 was over, 47 miners were killed in work-related accidents. This was over twice the number of miners who lost their lives just the year before.

Sadly, these accidents could have been prevented had mine operators followed the law and had MSHA vigorously enforced the law in its own regulations.

Congress did act swiftly in 2006 by passing the MINER Act. But 1½ years later, MSHA has not done much to implement the mandates of that law. The miners' widows who testified before the full committee this spring made that very clear to us. They pointed out the lack of essential improvements yet to be made at their mines.

And Cecil Roberts, president of the United Mine Workers, also gave us a sober assessment. He testified, and I am quoting him, "The reality is that if Sago, Alma or Darby happened today, the results would very likely be the same. The men who should have escaped those tragedies over a year still could not do so today because very little progress has been made."

The bills that we are examining today put teeth into the MINER Act by tightening and supplementing current law with regard to detailed emergency response plans, the rescue and recovery incident investigation authority of MSHA, and penalties for those owners who break the law. But the MINER Act when it was passed in 2006 didn't go far enough to provide for the health and safety of miners, and we knew we would have to do more.

These additional issues were more fully explored at the hearings the chairman held earlier this spring. For example, miners and miners' widows told us that miners are afraid to complain about

unsafe conditions because they don't want to lose their jobs and they don't want to be blacklisted.

In mining areas in West Virginia and Kentucky and other states, coal is king and we know that. If a miner loses his job, he loses the ability to make a living in his very own community. So this legislation also establishes an independent Office of Ombudsman to ensure proper attention to miner complaints of unsafe conditions, and to protect whistleblowers from retaliation.

In addition, we heard testimony that black lung disease is on the rise, and is showing up in even younger workers. We thought we were on the way to eradicating this disabling and often fatal disease, since black lung is entirely preventable if coal mine dust is properly controlled. Other countries have managed to do just that.

Obviously, we have to get a handle on this immediately. Today's bills revise critical health standards to respond to this alarming rise in black lung, and require MSHA to adopt the lower exposure limit recommended by the NIOSH.

The S-MINER Act and the Miner Health Enhancement Act are critical to protect our miners and this hearing is very important. We have a very distinguished and knowledgeable panel of witnesses.

And I am honored that all four of you are here. I look forward to your elaborating on these very important bills. I look forward to hearing your testimony.

Now, I yield to the ranking member, Mr. Wilson.

Mr. WILSON. Thank you.

Madam Chairwoman, as we mark the first anniversary of the landmark MINER Act, thank you for convening this hearing on the legislative outlook for additional mine safety legislation in the 110th Congress.

Last year in the wake of the tragic events at Sago, Alma and Darby, Congress and the president enacted the most comprehensive overhaul of mine safety laws in a generation. The MINER Act encourages better mining communications, technology, more modern safety practices inside U.S. mines, and the improved enforcement of current mine safety laws.

The bill passed the Senate without a single vote in opposition. It sailed through the House with only token opposition, and enjoyed broad support from both labor and industry, a true rarity in anyone's estimation.

Earlier this year in a full committee hearing, we learned that the Mine Safety and Health Administration, or MSHA, is on track to implementing each and every congressional mandate under the law, and throughout 2007 we have seen our nation's mines return to the more typical safety trend we have seen throughout this decade: fewer accidents, fewer injuries, and most importantly, fewer fatalities.

As we begin consideration of what steps to take next, it is important that we have a fuller grasp of just what impact the MINER Act currently is having and will have in the coming years. The concern that new legislation may disrupt or distract from the implementation of last year's reforms is not an unfounded one.

In fact, it is reflected in a letter sent just yesterday by nearly a dozen mine safety experts and academics to Chairman Miller and

Ranking Member McKeon. I am hoping to gain perspectives on this concern today.

Specifically, this letter raised the concerns with new legislation, writing, "The intense workload on mine management, including safety professionals and ultimately the miners who have to do the downstream MINER Act-related work, is too great at this time to contemplate further legislation."

Madam Chairman, I ask unanimous consent that this letter be entered into the record.

Chairwoman WOOLSEY. Without objection.

[The letter follows:]

July 25, 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Minority Member
Committee on Education and Labor
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon,

Last year we, academic experts in mine safety and health, joined the entire nation in sadness about the coal mine tragedies, and we had great concern about the safety of the nation's miners as well as our graduating engineers who will be working in mines. We were thankful for passage of the MINER Act, which reflected excellent partnership among Congress-persons and mining stakeholders, and dealt with important emergency response and miner-protection issues. We acknowledge the current and potential impact of MINER Act provisions, which are being addressed in earnest by MSHA, mine operators, safety professionals, and the miners themselves. However, more time is needed to address the provisions fully and effectively; too many provisions still require significant development. In a relatively short time, the provisions will be implemented and should have lasting positive effects in protecting miners.

Unfortunately, mine safety and health experts dispersed throughout the mining industry are not being afforded the opportunity to entrench the necessary safety culture in their mines. They must ultimately ensure that many of the MINER Act provisions will be institutionalized in practice at their mines. Thus far, they have been fully occupied with the nuts-and-bolts of complying with the act and have not had adequate time to coordinate and address this next, very important step. It is imperative that every employee at a mine does his/her job thoroughly and then effectively addresses existing or potential risks. Safety professionals at mines as well as federal and state inspectors are the driving forces to inculcate such a culture of prevention, but this inculcation process requires significant time for penetration into the work environment.

While there may be other safety and health issues that should be addressed in the future, in our opinion now is not the right time to pursue as much as is proposed in the pending bill. The intense work load on mine management, including safety professionals, and ultimately the miners who have to do the downstream MINER Act-related work is too great at this time to contemplate further legislation. Another option to consider would be to bring together miners, mine operators and other stakeholders in a partnership mode to assess the effectiveness of the MINER Act once it is fully implemented and all required studies are completed. At that time, all of us who are dedicated to improving mining safety can make an informed judgment on the need for and content of any additional legislation aimed at addressing any unresolved problems.

Many of the provisions of the MINER Act will require significant, intensive work before our mines and miners realize the full benefits of the bill. We ask you, in your guiding wisdom, to please consider our request sincerely before dramatically disrupting the very core of the industry – that is, all the people who depend on it for a stable life, including the coal used for energy.

Sincerely,

Robert L. Ferriter
Director, Mine Safety and
Health Program
Colorado School of Mines

R. Larry Grayson
Professor of Energy & Mineral
Engineering and George H., Jr.,
and Anne B. Deike Chair
in Mining Engineering
The Pennsylvania State University

Satya Harpalani
Professor and Chair of
Mining Engineering
Southern Illinois University

John R. (Ros) Hill
Director, San Xavier Mining Laboratory;
Adjunct Professor of Mining and
Geological Engineering; and former
Director, NIOSH Spokane Research Lab
University of Arizona

Michael E. Karmis
Stonie Barker Professor of Mining and
Minerals Engineering; Director, Virginia
Center for Coal & Energy Research
Virginia Tech

G.T. Lineberry
Professor of Mining Engineering and
Associate Dean for Commonwealth
and International Programs
University of Kentucky

Michael K. (Kim) McCarter
Professor and Chair of Mining
Engineering
University of Utah

Hugh Miller
Associate Professor of Mining
Engineering
Colorado School of Mines

Mary Poulton
Professor and Head of Mining
and Geological Engineering
University of Arizona

Richard J. Sweigard
Professor and Chair of Mining
Engineering
University of Kentucky

Jerry C. Tien
Associate Professor of
Mining Engineering
University of Missouri-Rolla

This letter represents our position on the issues as mine safety and health experts, and does not necessarily represent the position of our respective institutions.

Mr. WILSON. Thank you.

Furthermore, Madam Chairwoman, I have serious concerns that the proposed legislation could in fact undermine the MINER Act in some key ways. For example, the MINER Act created an expert panel to weigh the current impact and future use of belt air inside mines.

As a matter of fact, one of today's witnesses, Dr. James Weeks, sits on this panel. The proposed legislation before us, however, will ban belt air altogether, not even taking into account the expert opinions and future recommendations of Dr. Weeks and his panel of colleagues, which I find deeply troubling.

It is also almost always a bad idea for Congress to mistake itself as experts, when in fact the real experts are already dealing with

the matter and, indeed, this instance is no exception. Speaking of experts, Madam Chairwoman, I would be remiss if I did not raise a point I raised to committee Democrats earlier this week.

Because the majority explicitly refused to invite the chief federal mining regulatory agency, MSHA, to testify during this legislative hearing, my Republican colleagues and I did so, as it is imperative to receive the agency's input on the potential ramifications of a second mine safety bill in less than a year.

The point of a legislative hearing is to gather input from as many impacted stakeholders as possible, and heed their advice prior to acting on the bill. Not allowing one of those stakeholders to have a seat at the table not only defeats the purpose of the hearing, but it also raises serious questions about the legislation at hand, most notably: what are the supporters trying to hide?

Indeed, these supporters indicate MSHA has testified before our committee earlier this year, which is true. But the fact is, that was weeks before H.R. 2768 and H.R. 2769 were introduced. Because committee Republicans invited a stakeholder typically invited by the majority through the course of standard practice, another stakeholder does not have a seat at today's table.

Aside from MSHA, no group is more impacted by the new mandates than the mining industry itself. Because of the majority's insistence on limiting today's panel to three union-affiliated witnesses and one regulatory witness, there is no industry representative to provide input and, most critically, answers to our questions.

Looking out in today's audience, I see a representative from the mining industry, Mr. Bruce Watzman from the National Mining Association. I had served on the mining council in South Carolina, and I know the Mining Association was very helpful in giving us broad information. Mr. Watzman testified before our panel this year as well. But similar to MSHA's testimony, that was weeks before the new mine safety legislation was introduced.

Like the three-person labor representation and MSHA's representative on today's panel, this stakeholder has the right to be heard. Indeed, our subcommittee has the responsibility to hear from him and ask him difficult questions about the far-reaching legislation before us.

For this reason, Madam Chairwoman, I now move that the subcommittee call Mr. Watzman as a witness to testify and answer any questions with respect to H.R. 2768 and H.R. 2769 during today's hearing.

[The prepared statement of Mr. Wilson follows:]

Prepared Statement of Hon. Joe Wilson, Ranking Republican Member, Subcommittee on Workforce Protections

Madam Chairwoman, as we mark the first anniversary of the landmark MINER Act, thank you for convening this hearing on the legislative outlook for additional mine safety legislation in the 110th Congress. Last year, in the wake of the tragic events at Sago, Alma, and Aracoma, Congress and the President enacted the most comprehensive overhaul of mine safety laws in a generation.

The MINER Act encourages better mining communications technology, more modern safety practices inside U.S. mines, and improved enforcement of current mine safety laws. The bill passed the Senate without a single vote in opposition, sailed through the House with only token opposition, and enjoyed broad support from both labor and industry—a true rarity, in anyone's estimation. Earlier this year, at a full committee hearing, we learned that the Mine Safety and Health Administration—or MSHA—is on track in implementing each and every congressional mandate

under the law, and throughout 2007, we have seen our nation's mines return to the more typical safety trend we have seen throughout this decade—fewer accidents, fewer injuries, and most importantly, fewer fatalities.

As we begin consideration of what steps to take next, it is important that we have a fuller grasp of just what impact the MINER Act currently is having and will have in the coming years. The concern that new legislation may disrupt or distract from the implementation of last year's reforms is not an unfounded one. In fact, it is reflected in a letter sent just yesterday by nearly a dozen mine safety experts and academics to Chairman Miller and Ranking Member McKeon, and I'm hoping to gain perspectives on this concern today.

Specifically, this letter raised concerns with new legislation, writing—"The intense workload on mine management, including safety professionals, and ultimately the miners who have to do the downstream MINER Act-related work is too great at this time to contemplate further legislation". Madam Chairwoman, I ask unanimous consent that this letter be entered into the record.

Furthermore, Madam Chairwoman, I have serious concerns that the proposed legislation could—in fact—undermine the MINER Act in some key ways. For example, the MINER Act created an expert panel to weigh the current impact and future use of belt air inside mines. As a matter of fact, one of today's witnesses, Dr. Weeks, sits on this panel. The proposed legislation before us, however, will ban belt air altogether, not even taking into account the expert opinions and future recommendations of Dr. Weeks and his panel colleagues, which I find to be deeply troubling. It is almost always a bad idea for Congress to mistake itself with experts when—in fact—the real experts are already dealing with a matter, and, indeed, this instance is no exception.

Speaking of experts, Madam Chairwoman, I would be remiss if I did not raise a point I raised to Committee Democrats earlier this week. Because the Majority explicitly refused to invite the chief federal mining regulatory agency—MSHA—to testify during this legislative hearing, my Republican colleagues and I did so, as it is imperative to receive the agency's input on the potential ramifications of a second mine safety bill in less than a year. The point of a legislative hearing is to gather input from as many impacted stakeholders as possible and heed their advice prior to acting on the bill. Not allowing one of those stakeholders to have a seat at the table not only defeats the purpose of the hearing, but it also raises serious questions about the legislation at hand—most notably, "what are its supporters trying to hide?" Indeed, these supporters indicate that MSHA has testified before our Committee earlier this year, which is true. But the fact is, that was weeks before both H.R. 2768 and H.R. 2769 were introduced.

Because Committee Republicans invited a stakeholder typically invited by the Majority through the course of standard practice, another stakeholder does not have a seat at today's table. Aside from MSHA, no group is more impacted by the new mandates more than the mining industry itself. And because of the Majority's insistence on limiting today's panel to three union-affiliated witnesses and one regulatory witness, there is no industry representative to provide input and, most critically, answer our questions.

Looking out into today's audience, I see a representative from the mining industry—Mr. Bruce Watzman from the National Mining Association. Mr. Watzman testified before our panel this year as well, but—similar to MSHA's testimony—that was weeks before the new mine safety legislation was introduced. Like the three-person labor representation and MSHA's representative on today's panel, this stakeholder has the right to be heard. And indeed, our subcommittee has the responsibility to hear from him and ask him difficult questions about the far-reaching legislation before us.

For this reason, Madam Chairwoman, I now move that the Subcommittee call Mr. Watzman as a witness to testify and answer questions with respect to H.R. 2768 and H.R. 2769 during today's hearing.

Chairwoman WOOLSEY. Well, thank you, Mr. Wilson. I will respectfully deny your request.

Mr. KLINE. Madam Chair? Parliamentary inquiry.

It seems to me that the ranking member's motion is entirely germane. Could I ask under what rule of the House, what authority you can deny unilaterally such a motion?

Chairwoman WOOLSEY. Well, as the chair of this committee and as our precedent has in the past, if we have four witnesses, one is

the minority party and the other three are the majority party. If we had had four and two, it would have been different.

But I would like to point out that the industry representative has been here before us. He has certainly been questioned. We are open and hope to hear that we will get written questions and he will receive written responses.

Mr. KLINE. Thank you, Madam Chair. I don't believe that was the answer to the parliamentary inquiry.

Chairwoman WOOLSEY. Yes, I——

Mr. KLINE. As I stated——

Chairwoman WOOLSEY. Excuse me, this is my time.

Mr. KLINE. He was here before the bills were introduced.

Chairwoman WOOLSEY. You are talking on my time. I either yield to you or I don't.

Mr. KLINE. Madam Chair, was there an answer to the parliamentary inquiry?

Chairwoman WOOLSEY. Gentlemen, I have made my decision. I made it in writing. I didn't want to set something up. If we need more hearings, we will have more hearings, but today's hearing is three to one, and you chose your representative, and I thank you very much.

Mr. KLINE. Madam Chairman, may I strike the last word on the motion?

Chairwoman WOOLSEY. Mr. Kline?

Mr. KLINE. Thank you, Madam Chair.

I think the point here is that we don't have a full panel with all stakeholders represented. I understand that Mr. Wilson wrote a letter asking that MSHA be invited. You did respond. MSHA was not invited. The Republicans chose to make sure that the agency was here as a witness, but that meant that one of the key stakeholders is not here.

Together, we essentially have three union representatives before the subcommittee this afternoon. That is despite the fact that according to the Energy Information Association, unions represent approximately 25 percent of the mine workers in this country today. Claiming that we are even representing a majority of the coal miners today is not accurate.

Members of the National Mining Association will be the ones ultimately responsible for ensuring that any requirement we consider is implemented properly. Given the success of last year's MINER Act, when all the stakeholders had input, it is only responsible for us to again ensure that all stakeholders have input today.

Agreement on the front end guarantees success at the implementation stage. Mine operators aggressively are implementing the MINER Act provisions, updating training programs, placing additional self-contained self-rescuers, and standing ready to put improved communications technology in the mines as soon as it has been approved by MSHA.

Further, when the committee held our mining oversight hearings on March 20 and May 28, months ago, the two pieces of legislation before us had not been introduced. Any assertion that all the stakeholders who would be affected by H.R. 2768 and H.R. 2769 have had the opportunity to present their concerns to the members of the committee is just not true.

On July 22, that is just days ago, 2007, the Pittsburgh Post Gazette printed an editorial from Dr. Larry Grayson, professor of mining engineering and a witness before the committee earlier this year. Dr. Grayson discussed the MINER Act and concluded that, "Congress has time to carefully consider additional health and safety issues with the participation of everyone involved, but all the stakeholders currently pursuing good-faith efforts should not be distracted from the urgent work before them."

I ask unanimous consent that this article be placed in the record, and further I would suggest that we heed the advice of Dr. Grayson to include all of the stakeholders at this witness table by supporting Mr. Wilson's motion.

Chairwoman WOOLSEY. Without objection, your testimony will be set into the record.

[The newspaper article referred to follows:]

[From the Pittsburgh Post-Gazette, July 22, 2007]

Sunday Forum: Mine Mania

Congress should let the dust settle from last year's mine-safety legislation before writing some more, suggests mining engineer R. Larry Grayson

Few countries rely on coal more than the United States, and few states mine more coal than Pennsylvania. As a result, ensuring the safety of our coal miners, especially those who work under ground, is among the most challenging and urgent tasks in the American workplace.

The urgency of the task was sadly reinforced by the mine tragedies early last year in the coalfields of Appalachia that claimed the lives of 19 miners. While coal-mining communities dealt with their grief, mine operators, government regulators and other safety professionals set about determining why those fatalities occurred in light of the strong safety record that had characterized U.S. mining for much of the past decade.

In the months following these accidents, the entire mining community engaged in a multi-state effort to identify practical steps that should be taken to prevent such tragedies from occurring again. Fortunately, many of the improvements suggested for mine rescue, technology and training were included in a comprehensive mine-safety law Congress passed last summer.

The Mine Improvement and New Emergency Response Act of 2006 was overwhelmingly endorsed by members of Congress from both parties and supported by mine-safety professionals, mine operators and miners, as well as by occupational health professionals and developers of safety technology. The new mine-safety law calls on the nation's coal mines to adopt certain measures immediately and other procedures and safety technologies as soon as needed tests are completed and new equipment becomes commercially available.

But barely a year into our experience with this new law—implementing its many provisions, ordering and installing new safety equipment and training miners in new safety procedures—government agencies, safety professionals and the miners doing the work face an unexpected complication that threatens to undermine the MINER Act's goals. Proposals now before Congress would impose entirely new requirements on coal-mine operators and mine inspectors that would greatly disrupt the important focus on implementing the emergency rescue provisions of the MINER Act.

Since passage of the MINER Act, a dramatic turnaround in mining fatalities in 2007 appears to have put us back on track to achieve significant year-over-year improvements in mine safety. But without full implementation of the MINER Act provisions, this year's improved performance could prove ephemeral.

Further experience with the MINER Act may yet determine that adjustments are needed. We may learn that alternative equipment and training procedures could yield even better results than those now in use. But we do not know that yet, and we won't know until we have had sufficient experience with the new training procedures, equipment and mining practices the act requires.

The MINER Act is not perfect, but it mandates a comprehensive range of practices that are making a difference. Putting all of its provisions in place at all of the nation's 550 underground coal mines has been a major undertaking. Operators are trying to implement some provisions before federal regulators have issued regula-

tions for them. Still other provisions are disputed by federal and state regulators who disagree on standards and specifications.

The result has been chaos for federal and state agencies, safety professionals and the miners who are trying to implement the law. For example, to isolate abandoned mine sections that could pose safety hazards, one mine's workforce has been forced to build three sets of seals to three different specifications.

It surprises no one that many experienced inspectors, mine managers and supervisors are leaving the industry, exacerbating an already critical shortage of mining industry personnel.

Complying with the MINER Act is not the only challenge the industry faces. The mine tragedies last year also spurred many good operators to take voluntary steps to improve mine safety. Many of these steps were recommended by an independent Mine Safety Technology and Training Commission that I chaired last year.

Once adopted, these voluntary measures undoubtedly will improve the safety of coal miners beyond the level prescribed by the MINER Act, thereby setting the high standard of safety performance desired by good people throughout the industry. Additional legislation now would not only intensify the chaos in the coal fields, but also would stifle incentives to adopt these voluntary steps, which are essential for a truly new paradigm of mine safety based on prevention and risk management.

Let's not jeopardize the effective implementation of the MINER Act. Achieving the act's goals is far too important for the protection of miners, especially during emergencies.

Congress has time to carefully consider additional health and safety issues with the participation of everyone involved, but all of the stakeholders currently pursuing good-faith efforts should not be distracted from the urgent work before them.

Mr. KLINE. Thank you, Madam Chair. I yield back.

Mr. WILSON. Parliamentary inquiry?

Chairwoman WOOLSEY. Excuse me. I would like to respond.

Unfortunately, this is the advantage of being in the majority. I have been on this committee for the last 15 years and I can tell you absolutely this is the way the precedent says this is how we handle this. I assure you that any written testimony will be taken seriously, and that if there is a need for another hearing, we will have another hearing.

Mr. WILSON. I have a parliamentary inquiry.

Chairwoman WOOLSEY. Yes?

Mr. WILSON. Madam Chairwoman, my motion is in order. House rule 11 authorizes committees and subcommittees to call witnesses. My motion would direct the subcommittee to call an additional witness, an action that is undeniably within the authority of the subcommittee. In addition, my motion is timely offered and germane to the subject matter of today's hearing.

Under what authority is the chair refusing to consider my motion? It would aid my understanding if you could refer me to a specific House or committee rule which permits the chair to refuse consideration of the motion?

Chairwoman WOOLSEY. The question before us is on the motion of Mr. Wilson.

Those in favor, say, "Aye."

Those opposed, "No."

Mr. KLINE. I request a recorded vote.

Chairwoman WOOLSEY. We will need to get the clerk to call the roll. So we are going to sit around a little while.

The clerk will call the roll.

The CLERK. Chairwoman Woolsey?

Chairwoman WOOLSEY. No.

The CLERK. Chairwoman Woolsey votes no.

Mr. Payne?

[No response.]
Mr. Bishop?
Mr. BISHOP. No.
The CLERK. Mr. Bishop votes no.
Ms. Shea-Porter?
[No response.]
Mr. Hare?
Mr. HARE. No.
The CLERK. Mr. Hare votes no.
Mr. Wilson?
Mr. WILSON. Aye.
The CLERK. Mr. Wilson votes aye.
Mr. Price?
[No response.]
Mr. Kline?
Mr. KLINE. Aye.
The CLERK. Mr. Kline votes aye.
Chairwoman WOOLSEY. The clerk will report.
The CLERK. Madam Chair, two members vote "yes" and three members vote "no."
Chairwoman WOOLSEY. The motion is denied.
Now, I would like to introduce our very distinguished panel of witnesses here before us this afternoon.
And welcome you all.
For those of you who have not testified before the committee, let me explain our lighting system and the 5-minute rule. Everyone, including members, are limited to 5 minutes of presentation and/or questioning. So please know that when the green light is illuminated, you begin to speak. When you see the yellow light, it means you have 1 minute remaining. When you see the red light, it means your time has expired and you need to conclude your testimony.
Be certain to turn on your microphone, otherwise we start yapping at you, so that would be good. No, we are not going to cut you off mid-sentence, so you can finish your thoughts and go on with that.
So now, it is my honor to introduce the witnesses in order that we will hear them.
First, Kevin Stricklin is the administrator of Coal Mine Safety and Health at the Mine Safety and Health Administration. Having been appointed to that post in April of 2007, he has worked for MSHA since 1980. As administrator, Mr. Stricklin oversees about 11 districts, which contain about 600 underground mines and 750 surface mines. He is a graduate mining engineer from the University of Pittsburgh.
Dennis O'Dell is the administrator for occupational health and safety at the United Mine Workers of America. He has been with the UMW since 1993. He is the chair of the joint industry committee between the UMW and the National Bituminous Coal Operators Association, and was appointed to the NIOSH Mine Safety and Health Research Advisory Committee in 2006. He was educated at Fairmount State College in West Virginia and Westland College.
Mr. Jim Weeks is a certified industrial hygienist who has worked on occupational health and safety problems in the mining industry

since 1983. He has over 50 publications in the peer-reviewed scientific literature and is senior editor of Preventing Occupational Disease and Injury, published by the American Public Health Association. He has served on many advisory committees, including a panel of the National Academy of Sciences to evaluate NIOSH and their mining programs, and the MSHA Advisory Committee on Respirable Dust. He received an engineering degree from the University of California-Berkeley. He is a doctor of sciences that he received from the Harvard School of Public Health.

Michael Wright is the director of health, safety and environment for the United Steelworkers, and has been with the steelworkers since 1977. He is a former member of the Department of Labor's National Advisory Committee on Occupational Health and Safety and is a current member of EPA's Clean Research Advisory Committee. He was trained as an industrial engineer at Cornell University, and as an industrial hygienist at the Harvard School of Public Health.

I welcome all four of you.

We will begin with you, Kevin Stricklin.

STATEMENT OF KEVIN STRICKLIN, ADMINISTRATOR OF COAL MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR

Mr. STRICKLIN. Thank you. Chairman Woolsey, Ranking Member Wilson and members of the subcommittee, I am pleased to appear before you today to discuss H.R. 2768, the Supplemental Mine Improvement and Emergency Response Act of 2007, or the S-MINER Act.

As you mentioned, I have 28 years of experience in mining, including 27 years with MSHA, where I currently serve as the administrator for coal mine safety and health. I am appearing here today before the committee to speak to the technical issues noted in my statement for the record. I cannot comment on any policy matters regarding these bills, as the administration has not yet completed its comprehensive review.

Before discussing H.R. 2768, I would like to summarize briefly the progress that MSHA has made over the past year in implementing the MINER Act. Since the president signed the MINER Act in June of 2006, MSHA has made remarkable progress in implementing its provisions, including new penalties for late accident notifications, new penalties for unwarrantable failure violations, new penalties for flagrant violations, and a final rule to increase civil penalty amounts.

We have also implemented a requirement to provide breathable air to trapped miners; a requirement that mine operators purchase SCSR training units and electronically submit their SCSR inventories to MSHA. We have put into effect an emergency temporary standard on mine seals that significantly increases the strength standard for mine seals to 50 psi, 120 psi, and more than 120 psi when conditions exist that may create pressures in excess of 120 psi.

We have also approved 22 post-accident communication and tracking systems, including six new devices; initiated a final rule to strengthen mine evacuation practices. As of today, MSHA has approved over 97 percent of the emergency response plans for the

active mines. Implementing the MINER Act is a high priority, along with hiring and training new inspectors and improving enforcement of the current regulations.

I would now like to turn to the technical analysis of H.R. 2768. Several of the provisions in H.R. 2768 would cause administrative problems for MSHA. Some will be problematic to implement and others would actually weaken current safety and health standards that we administer. A few of these concerns would be section 4(b) concerning underground refuge.

Mandating refuge chambers preclude other refuge options that may provide greater protection to miners such as boreholes to the surface from locations further than 1,000 feet from the working face. In addition, refuge chambers may not be practical in all underground mining situations such as underground mines with coal seams no higher than the table that we are sitting act.

Section 4(c)(2) concerning mine seals. The legislation creates an incentive for mine operators to build seals at a lower strength level because it requires continuous mortaring behind all seals no matter how strong the seals are. Although H.R. 2868 requires mortaring behind all seals, it does not prescribe what actions a mine owner should take if they find an explosive atmosphere behind the seal.

The requirement that mine operators sample behind mine seals through boreholes that were drilled from the surface also raises a couple of concerns. Number one, it is not always feasible to sample from the surface due to geologic conditions and surface property rights. And number two, boreholes with metal casings introduce other safety hazards in the sealed areas that may be liberating methane.

The notification of emergency and serious incidents, this section of the MINER Act sets up a two-tiered system of notification for mine incidents. Last year, MSHA issued regulations requiring mine operators to notify MSHA within 15 minutes of an incident. If this MINER Act were to be enacted, it would establish emergency notification procedures that are less stringent than the current requirements.

In section 6(g), accident investigations, this section of the MINER Act raises a number of complex policies. However, MSHA takes its accident investigation responsibilities very seriously as part of our law enforcement mandate. Our accident reports form the basis for our civil and criminal enforcement actions, and must stand along as the government's authoritative accident report.

Thank you for allowing me to testify today on this technical review of this legislation. I look forward to answering any questions that you may have.

[The statement of Mr. Stricklin follows:]

STATEMENT OF KEVIN G. STRICKLIN
ADMINISTRATOR FOR COAL MINE SAFETY AND HEALTH
MINE SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR

BEFORE THE

COMMITTEE ON EDUCATION AND LABOR
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
U.S. HOUSE OF REPRESENTATIVES

July 26, 2007

Chairman Woolsey, Ranking Member Wilson, and Members of the Subcommittee, I am pleased to appear before you today to discuss H.R. 2768, the "Supplemental Mine Improvement and Emergency Response Act of 2007" – the "S-MINER Act".

I have 28 years of experience in mining, including 27 years with MSHA. I currently serve as the Administrator of the Coal Mine Safety and Health program. I am here today to offer my technical advice to the Subcommittee on how the provisions of H.R. 2768 will affect mine safety and the administration of coal mine safety standards in underground mines.

Before discussing the provisions of H.R. 2768, I would like to summarize briefly the progress MSHA has made over the past year in implementing the MINER Act (Act).

Implementing the MINER Act of 2006

MSHA's number one priority is to protect the health and safety of our nation's miners. This commitment has resulted in the timely and successful implementation of MINER Act provisions– often ahead of schedule and beyond the requirements of the Act. Significant accomplishments over the past 12 months include:

New Penalties for Late Accident Notification and Unwarrantable Failure Violations
Upon the signing of the MINER Act of 2006, MSHA immediately implemented new minimum penalties for late accident notification and "unwarrantable failure" violations.

New Penalties for Flagrant Violations
MSHA issued a Procedure Instruction Letter (I06-III-04) to implement the new "flagrant violation" maximum penalty of up to $220,000.

Secretarial Order to Improve Post-Accident Communication with Families
The Secretary of Labor signed an Order creating the Family Liaison and Primary Communicator positions that will be filled by specially trained MSHA employees at emergency sites. MSHA, with the assistance of the National Transportation Safety Board and the American Red Cross, has trained 14 family liaisons to date.

Strengthening Evacuation Practices
MSHA issued a final rule to strengthen mine evacuation practices. The rule included:

- ***Self-Contained Self Rescue (SCSR) Devices*:** The rule requires coal mine operators to provide additional SCSRs for each miner underground in areas such as working places, mantrips, escapeways, and other areas where outby crews work or travel. The rule also requires that SCSRs be readily accessible in the event of an emergency.

- ***Multi-Gas Detectors***: The rule goes beyond the requirements of the MINER Act by requiring coal mine operators to provide multi-gas detectors to miners working in close proximity to others or to individual miners working alone.

- ***Lifelines*:** The rule requires coal mine operators to install directional lifelines in all primary and alternate escape routes out of the mine. Lifelines help guide miners in poor visibility conditions toward evacuation routes and SCSR storage locations.

- ***Training*:** The rule requires coal mine operators to conduct quarterly training sessions instructing miners how to don SCSRs and, in particular, how to transfer one SCSR to another. The training provisions in the mine emergency evacuation rule go beyond the requirements of the MINER Act by requiring "expectations training," a process exposing miners to simulated conditions they would encounter using a SCSR during an emergency. SCSR training units for annual expectations training have now been developed.

- ***Accident Notification*:** The rule requires all mine operators to contact MSHA within 15 minutes of a serious accident. MSHA also implemented a nation-wide single call-in number (1-800-746-1553) for accidents and hazardous condition notifications to ensure an immediate, consistent and effective response by MSHA.

Requiring Breathable Air for Trapped Miners
MSHA issued a Program Information Bulletin (PIB) (No. P07-03) gives mine operators a range of options to provide breathable air to miners who are trapped underground, including the use of boreholes and oxygen supplies. The use of state-approved refuge chambers is acceptable as a means of meeting the requirements of the PIB.

New Civil Penalties for Safety and Health Violations
MSHA published a final rule to increase civil penalty amounts for mine safety and health violations. Issuance of this rule goes beyond the requirements of the MINER Act. The new rule provides for a general increase in civil penalties for violations and is applicable to all mines and contractors. The new penalty schedule:

1. **Increases penalties:** Increases civil penalties overall, targeting the more severe health and safety violations.

2. **Repeat violations**: Adds a new provision to increase penalties for operators who repeatedly violate the same MSHA standards.

3. **Single penalty:** No longer applies. Non-significant and substantial (non-S&S) violations formerly processed as $60 single penalties are now processed as regular formula assessments.

As of the one-year anniversary of the MINER Act, MSHA issued 13 citations for flagrant violations, including three of the largest proposed penalties in the history of the Agency.

Enforcing Safety Device Requirements
MSHA published a notice in the *Federal Register* notifying mine operators that SCSR training units were available. Mine operators were required to possess these training units, or provide a purchase order, by April 30, 2007, and conduct expectations training with them within 60 days of receipt of the units.

Tracking Inventory of Safety Devices
MSHA implemented a system for coal mine operators to electronically submit their inventories of SCSRs – a requirement of the mine emergency evacuation rule that went beyond the mandates of the MINER Act.

Protecting Miners Near Abandoned Areas
MSHA published an Emergency Temporary Standard (ETS) that increased the protections for miners working near sealed-off abandoned areas in underground coal mines on May 22, 2007. The ETS significantly increases the strength standard for mine seals from 20 pounds-per-square-inch (psi) set in 1992, to 50psi, 120psi, and more than 120psi when conditions exist that may create pressures in excess of 120psi.

Developing New Communications Technologies
MSHA has conducted meetings with representatives of 55 communications and tracking system companies, observed the testing and/or demonstration of 22 post-accident communications and tracking systems, and approved 22 systems, including six new devices.

Approval of Emergency Response Plans
MSHA has approved over 97 percent of the Emergency Response Plans (ERPs) for active producing mines.

MSHA is using all available tools, including tough enforcement, education and training, and technology, to achieve its goal of safer and healthier mines. For example, MSHA is using its statutory authority under the pattern of violations provision in the Mine Act of 1977 to bring mine operators who habitually violate MSHA standards and view penalties as the cost of doing business into compliance. In addition, MSHA developed a database to provide a more objective analysis of accident trends and enforcement results to better identify persistent repeat violators.

Technical Analysis of H.R. 2768

At this point, I would like to turn to the technical analysis of H.R. 2768. Several of the provisions contained in H.R. 2768 would cause administrative problems for MSHA; some would be problematic to implement; and others would actually weaken current safety and health standards administered by MSHA. Some of these concerns include:

1. *Section 4(a), Post Accident Communications*: This provision would require a "hardened" electronic tracking and communication system "at least as effective as a 'leaky feeder' type communications and tracking system currently in use." This section also requires that a leaky feeder system be "hardened to the extent possible." MSHA's experience with violent explosions leads me to conclude that these systems cannot feasibly be "hardened" to survive all explosions. Moreover, in many cases, hardening these systems may diminish their functionality.

2. *Section 4(b), Underground Refuges*: This section of the S-MINER Act would require the installation of rescue chambers, rather than "refuge alternatives" as referred to in the MINER Act, within 1,000 feet of the nearest working face in each working section of an underground coal mine. Mandating rescue chambers precludes other refuge options that may provide greater protection to miners, such as boreholes to the surface from locations further than 1,000 feet from the working face. Also, rescue chambers may not be practical in all underground mining situations. For example, some mines have mining heights no higher than the table at which we are now sitting. Also, mandating rescue chambers through statute will discourage innovation and limit the flexibility that MSHA and the National Institute for Occupational Safety and Health (NIOSH) have in exploring new solutions and technologies that could provide better protections for miners trapped underground.

3. *Section 4(c)(2), Mine Seals*: This section would require monitoring all sealed-off areas in a mine. It would also require atmospheric sampling of sealed areas through boreholes. There are several safety concerns with this provision. First, this section requires mine operators to monitor behind all seals. If a mine operator were to build a high psi-rated seal, there should be no need to monitor behind it. Therefore, the legislation as currently written creates an incentive for mine operators to build seals at a lower strength level because the legislation would require monitoring no matter how strong the seals are. Second, while the bill requires monitoring behind all seals, it does not prescribe what actions a mine owner should take if they find an explosive atmosphere behind a seal. Furthermore, the provision requiring that mine operators sample behind mine seals through boreholes drilled from the surface raises two concerns: (1) it is not always feasible to sample from the surface due to geologic conditions and surface property rights; and (2) boreholes have metal casings, introducing other safety hazards into a sealed area that may be liberating methane.

4. *Section 4 (c)(3), Ventilation Controls*: This section requires MSHA to publish an interim final rule on ventilation controls. The bill requires that ventilation controls in an underground mine be "constructed of solid concrete block" and "sealed with an

appropriate bonding agent." The problem with this provision is that, in mines where convergence or other geological conditions exist, other types of ventilation controls must be used. There are also questions about whether or not existing ventilation controls would be grandfathered.

5. *Section 4(d), Belt Air*: This section would prohibit belt haulage entries from being used to ventilate active working places. The total ban on the use of belt air does not permit a mine-specific variance (a petition for modification) where belt air would improve safety protections or a mine-specific variance that would add sufficient additional provisions to ensure comparable safety protections.

6. *Section 4(e), Pre-Shift Review of Mine Conditions*: This section requires no later than 90 days after enactment, mine foremen, examiners and assistant foremen meet their counterparts on incoming shifts to verbally update them on conditions they observed during their shifts, including hazardous conditions. Agents of the operator would also be required to meet with crew members prior to entering shifts and these meetings will have to be recorded in a book available for inspection. This section of the bill may simply be impractical to implement and regulate given irregular work shifts and the large numbers of people it involves. For example, current regulation requires pre-shift exams every 8 hours. However, many shift changes are made at 8, 10 or 12 hour intervals. As such, this provision would be quite confusing to implement and very difficult to enforce.

7. *Section 4(h)(2), Multi-Gas Detectors*: This section requires every miner "who may be working alone" must be equipped with a multi-gas detector. This section of the bill is, for all practical purposes, identical to current MSHA regulations that require all miners working alone and all groups of miners must be equipped with a multi-gas detector, with one exception. This provision is unnecessary.

8. *Section 4(h), Lightning*: This section requires mine operators to use "appropriate administrative controls" to protect miners when lightning is present and when operators "cannot fully protect their miners from the effects of lightning through grounding and other engineering controls." Under the aforementioned Seals ETS MSHA issued on May 22, 2007, lightning hazards are addressed by the increased strength and monitoring requirements of seals in addition to the required removal of conductive materials from behind seals.

9. *Section 4(i), SCSR Inspection Program*: This section would require MSHA to test at least 5 percent of self-contained self-rescuers (SCSRs) every 6 months. Under MSHA's best estimate, once the current backlog of SCSRs is eliminated, there will be approximately 200,000 SCSRs in underground coal mines. This provision would require MSHA to withdraw approximately 20,000 of these critical safety devices per year for testing. Testing this number of SCSRs would require a commitment of significant resources from both MSHA and NIOSH and remove SCSRs from service where they could otherwise be used to protect miners.

10. *Section 5(e), Notice of Abatement*: This section requires a mine operator to notify MSHA when a violation is abated. MSHA currently returns to the site of the violation and ensures that the violation is abated, rather than accepting notice from a mine operator as proof of abatement. This section may have the unintended consequence of weakening current requirements for abatement.

11. *Section 5(j), Imminent Dangers*: This section of the S-MINER Act expands the scope of "imminent danger" withdrawal authority contained in the Mine Act of 1977. This section promotes an inconsistent and inappropriate use of the term "imminent danger" –a term of art clearly defined in the Mine Act of 1977. The Mine Act's definition of "imminent danger" applies now to situations where one can reasonably expect death or serious physical harm to occur before the condition is abated. As used in the draft legislation, the term would apply to any violations concerning emergency shelters or communications— violations which may not involve death or serious physical harm before they can be abated.

12. *Section 6(c), Mine Location Maps*: This provision needs clarification. After discussions with staff, we understand that the concern being addressed is the ability of rescue teams to find a mine during an emergency. If so, current training provisions for rescue teams take care of this concern.

13. *Section 6(d), Required Notification of Emergencies and Serious Incidents*: This section of the S-MINER Act sets up a two-tiered system of notification for mine incidents. Last year, MSHA issued regulations – which became part of the MINER Act – requiring mine operators to notify MSHA within 15 minutes of an incident listed in Section 6(d) of the S-MINER Act. If Congress were to enact this provision, it would establish emergency notification procedures that are less stringent than current requirements.

14. *Section 6 (f)(1), Emergency Medical Response*: This provision requires all mine operators – not just underground coal mine operators – to have "an ambulance or other means of providing emergency medical response in the event of an accident." This provision presents compliance difficulties for mines in isolated sections of the country.

15. *Section 6(f)(2), Medical Emergency Technical Training*: This section of the S-MINER Act references "training and medical emergency technicians" and requires MSHA to revise current first aid and medical training requirements. MSHA does have requirements to train miners in basic first aid, but does not have any emergency medical technical training requirements in its regulations.

16. *Section 6(g), Accidents and Investigations*: This section of the S-MINER Act raises a number of complex policy issues. MSHA takes its accident investigation responsibilities very seriously as part of our law enforcement mandate. Our accident report forms the basis for our civil and criminal enforcement actions and must stand alone as the government's authoritative accident report. MSHA is the only federal

agency charged with mine safety and health enforcement and is therefore in the unique position of having the world's best mining experts to address the cause or causes of mine accidents. No other agency has this particular expertise. Its accident reports must be written to support its enforcement efforts because MSHA is the only federal agency with enforcement authority at mines when violations are found. If another entity is contracted to produce another accident report as prescribed in the bill, it raises questions about which report is the final word on the causes of an accident and upon which report MSHA's enforcement actions can be based.

Conclusion

Madam Chairman, thank you for allowing me to testify today to present a technical review of this legislation. I look forward to answering any questions you may have.

Chairwoman WOOLSEY. Thank you, Mr. Stricklin.

Mr. O'Dell?

STATEMENT OF DENNIS O'DELL, ADMINISTRATOR OF OCCUPATION SAFETY AND HEALTH, UNITED MINE WORKERS

Mr. O'DELL. Madam Chair and other members of the subcommittee, my name is Dennis O'Dell. I am currently the administrator of occupational health and safety for the United Mine Workers of America. Probably what I am more proud of is, prior to this, I was a natural coal miner that worked for close to 20 years.

I would like to thank you for inviting me to testify before you today.

This committee has an opportunity to change history by better protecting our nation's most valuable resource, the miners. Before and after the enactment of the MINER Act, the union has always maintained that it was a good first step for protecting miner safety. But we have also consistently expressed that Congress needed to continue to push forward with improvements in mine health and safety. The job is not done.

This legislation is more than just another step in the right direction. It answers many of the most pressing safety and health needs of our miners today. This legislation is also especially important because it is designed to prevent dangerous situations from happening in the first place. The enhanced enforcement authority that this legislation provides to the Mine Safety and Health Administration will also be critical if the agency embraces their new authority and actually uses it.

Irresponsible coal operators need to know that MSHA is serious about enforcing all the laws on the books. The UMWA is very supportive of the new respirable dust standards included in this legislation. We have worked long and hard to reduce the incidence of black lung in coalminers. This is a preventable disease. It has not gone away, and we believe this legislation will mean a giant step forward for all coal miners.

I sit here today and I find it hard to believe that anyone in the mining industry would be against providing a means to improve safety. I have heard comments from some industry folks that there is no need to act. They say that based on this year's fatalities, the industry is back on track. I ask you: Is 24 mine fatalities so far this year acceptable? Do you think the family members of these 24 miners who have died believe that the industry is back on track?

You are going to hear comments like, it is too early to act. I ask you to do the math. From 1977 to 2006 equals 29 years since any major changes have been made to improve miners' health, safety and training, and those changes came about last year as the original 1969 act did, and was motivated by the blood of the miners. I am asking you today: Should we wait another 29 years and let more miners die? Or should we be, as this new legislation suggests, proactive and prevent more deaths and injuries?

The industry may try to argue that if the use of belt air is eliminated, many mines won't be able to operate because they can't control their roof. I spent many hours searching NIOSH's mining page looking for research and studies to support this statement. I have yet to find it.

You may hear that this legislation will harm small operators. I am telling you today that is nonsense. Mining laws need to be applied to all mine operators, large and small. It is time to level the playing field and give all miners the same level of protection no matter the size of the mine or the number of employees an operator has on its payroll.

I recently read this in a newspaper article, and this statement was from the chair of the Mine Safety Technology and Training Commission that was formed after the Sago and Alma disasters: "Complying with the MINER Act is not the only challenge the industry faces. The mine tragedies last year also spurred many good operators to take voluntary steps to improve mine safety. Many of

these steps were recommended by an independent Mine Safety and Technology Training Commission. Once adopted, those voluntary measures undoubtedly will improve the safety of coalminers beyond the level prescribed by the MINER Act, therefore setting the high standard of safety performance desired by good people throughout the industry. Additional legislation now would not only intensify the chaos in the coal fields, but would also stifle incentives to adopt these voluntary steps which are essential for a truly new paradigm of mine safety based on prevention and risk management."

Madam Chair and members of the committee, the problem with this statement is that these steps and measures are on a voluntary basis. Some of the more reputable operators were, as he put it, good operators may do this. This also relies on the use of risk management that we are now learning is not the best tool provided to protect miners and should never be allowed as a means to replace regulatory enforcement by our state and federal agencies.

Others, or the bad actors/operators, are doing nothing. The only way that protection will be afforded across the board is through enforceable regulations such as those written in the proposed S-MINER Act. Some say it would be a burden on the industry and the regulators. What about the burden of the miners who have and continue to die? Or the family members left behind because of the inadequate safety provisions and mandatory regulations? I propose to you that the burden that may be placed on coal operators does not even come close to that.

In 1969—and I am wrapping up—coal operators cried to Congress that if they were placed under the standards introduced in the 1969 Mine Act, the industry would fold. Yet we are still here today in 2007, safer than we were in 1969.

Madam Chair, the UMWA strongly supports this legislation. We commend you and Representatives Miller, Rahall and others for introducing it, as well as those who have signed on.

I thank you, and I will be happy to answer questions.

[The statement of Mr. O'Dell follows:]

Prepared Statement of Dennis O'Dell, Administrator of Occupation Safety and Health, United Mine Workers

Madam Chair, Congressman Miller and other members of the Subcommittee, my name is Dennis O'Dell, Administrator of Occupational Health and Safety for the United Mine Workers of America ("UMWA"), the union that for 117 years has been an unwavering advocate for miners' health and safety. I would like to thank you for inviting me to testify before you today. This Committee has an opportunity to change history by better protecting our nations most valuable resource—the Miners.

Congress has played a significant role in advancing miners' health and safety and I would like to express my appreciation to the leadership of this Committee and others for your efforts to further protect the health and safety of all miners. Your continued oversight is critical to ensuring miners will go home safely at the end of their shift.

Shortly after the mining disasters in 2006, many from the mining community testified at various Senate and Congressional hearings about the inadequate protections for miners' health and safety. Congress answered and moved to enact the MINER Act. That law includes several important provisions aimed at helping miners after a mine emergency develops, such as the use of underground safety chambers, wireless communications, tracking devices, increased amounts of breathable air available to miners, and many other important safety protections.

Before and after the enactment of the MINER Act, the Union has always maintained that it was a good first step to protecting miners safety, but we have also consistently expressed that Congress needs to continue to push forward with improvements in mine health and safety. The job is not done.

The legislation introduced in Congress by Representatives George Miller (D-Calif.) and Nick Rahall (D-W.V.) is much more than just another step in the right direction, it answers many of the most pressing safety and health needs of miners.

This legislation is especially important because it will help prevent dangerous situations from happening in the first place. For example, had the requirements in this legislation on seals, on belt flammability and on banning the use of ventilating the working faces of mines with belt air been in place prior to 2006, the tragic deaths at Sago and Aracoma very likely could have been prevented.

The enhanced enforcement authority this new legislation provides the Mine Safety and Health Administration (MSHA) will also be critical to ensuring the safety and health of miners but, as always, only if the agency embraces that new authority and actually uses it. Irresponsible coal operators need to know that MSHA is serious about enforcing all the laws on the books and also enforcing the penalties for noncompliance.

The UMWA is very supportive of the new respirable dust standards included in this legislation. We have worked long and hard to reduce the incidence of black lung in coal miners, yet have been consistently frustrated by government inaction at nearly every turn. This is a preventable disease that has not gone away, and we believe this legislation will mean a giant step forward for all coal miners.

I find it hard to believe that anyone in the mining industry would be against providing a means to improve safety. I have heard comments from some industry folks that there is no need to act, they say that based on this years fatalities, the industry is back on track—I ask you, is twenty-four (24) mining fatalities (9 coal/15 M/NM) so far this year acceptable? Do you think the family members of these 24 miners who have died believe that the industry is back on track?

You may hear comments like it is too early to act. I ask you to do the math, 1977 to 2006 equals 29 years since any major changes have been made to improve miners health safety and training, and this came about, as the original 1969 Act, by the blood of our miners—should we wait another 29 years and let more miners die, or should we be, as this new legislation suggests, proactive and prevent more deaths and injuries.

The industry may try to argue that if the use of belt air is eliminated, many mines won't be able to operate because they can't control their roof. I spent many hours searching NIOSH's mining page looking for research and studies on the use of belt air. All I could find was reports associated with the hazards of the use of belt air with fires, respirable dust, smoke roll back, and escape hazards. I continued to search NIOSH's section on roof control problems and how to control all types of adverse roof conditions, I didn't see using 2 entry systems and belt air as one of those remedies to control adverse roof conditions.

You may hear that this legislation will harm small mine operators. Its time that Congress and mine enforcement agencies quit buying into such nonsense. Mining laws need to be applied to all mine operators, large and small. Its time to level the playing field and give all miners the same level of protection no matter the size of the mine or number of employees an operator has on their payroll.

You will hear from those who oppose this bill complaints about the new seal requirements—for example, it has been reported in an interview that one mines workforce has been forced to build three sets of seals to three different specifications because there are three (3) different seal standards on the psi pressure strength ratings by which they are to build their seals. They, meaning the industry, claims this is causing chaos and confusion. They don't tell you they have been given the option to continuously monitor the areas behind these seals taking all of the guesswork out of it. We, meaning the UMWA and members from the Industry, have meet jointly with MSHA on how to address these seal construction and monitoring problems. It was my understanding that we were well on our way to resolving their concerns, and if not the UMWA stands committed to working with the Industry and MSHA to help resolve their concerns.

I recently read in a newspaper article this statement from the chair of the Mine Safety Technology and Training Commission that was formed after the Sago and Alma disasters.

"Complying with the MINER Act is not the only challenge the industry faces. The mine tragedies last year also spurred many good operators to take voluntary steps to improve mine safety. Many of these steps were recommended by an independent Mine Safety Technology and Training Commission."

"Once adopted, these voluntary measures undoubtedly will improve the safety of coal miners beyond the level prescribed by the MINER Act, thereby setting the high standard of safety performance desired by good people throughout the industry. Additional legislation now would not only intensify the chaos in the coal fields, but also

would stifle incentives to adopt these voluntary steps, which are essential for a truly new paradigm of mine safety based on prevention and risk management".

The problem with this statement is that the steps and measures are on a voluntary basis by some of the more reputable, or as he put it "good operators". This also relies on the use of "risk management" that we are learning is not the best tool provided to protecting miners, and should never be allowed as a means to replace regulatory enforcement by our State and Federal agencies. Others, or the bad actors/operators are doing nothing. The only way that protection will be afforded across the board is through enforceable regulations such as those written in the proposed S-Miner Act. Some would say it would be a burden on the industry and the regulators. What about the burden of the miners who have died over the years, and the family members who has been left behind because of inadequate safety provisions and mandatory regulations? I propose to you that the burden that may be placed on coal operators does not even come close to that.

In 1969, coal operators cried to Congress, that if they were placed under what was then introduced as the 1969 Mine Act, the industry would fold. Yet we are still here in 2007, safer that we were prior to 1969. In a day and age when we rely on coal to supply the majority of our Nation's energy demands so that we are not dependant upon other countries resources, we need to continue to improve our safety record so that we can reach our goal of zero accidents and zero fatalities.

Madam Chair, The UMWA strongly supports this legislation in all aspects, and commends you, Representatives Miller and Representative Rahall for introducing it, as well as all of those who have signed on as co-sponsors. Your continuing commitment to improving mine health and safety is greatly appreciated by coal miners and their families across America.

I thank you and will be happy to try to answer any questions you may have.

Chairwoman WOOLSEY. Thank you, Mr. O'Dell.

Dr. Weeks?

STATEMENT OF JAMES WEEKS, SAFETY AND HEALTH CONSULTANT

Mr. WEEKS. Chairman Woolsey and other members of the committee, my name is Jim Weeks. I am a consultant industrial hygienist, appearing today on behalf of the United Mine Workers.

Congressman Wilson noted earlier that I am also a member of the technical study panel investigating the issue of the use of belt air that was mandated by the MINER Act. I should be clear today that I am appearing on behalf of the United Mine Workers and not in any way as a member of that technical study panel. I discussed this matter with the ethics officer at the Department of Labor and received those guidelines from him.

Anyway, thanks for inviting me to testify, but more important, I wish to thank you for providing the leadership to improve the health and safety of miners.

Mining, unfortunately, in the United States remains the most dangerous industry in the United States and worldwide. Mines in the U.S. remain the least safe of mines in advanced industrial countries. So there is lots of room for improvement.

I wish to speak to two aspects of the proposed legislation. First, the revision of the dust standard from two milligrams to one milligram for a 10-hour work-shift; and second, use of the personal dust monitor, the PDM, for measuring exposure to respirable dust.

Over the past 5 years, there have been several clusters of black lung cases identified among miners who started their mining careers well after the two milligram standard became effective. Many of these cases were of the more advanced form, progressive massive fibrosis, or PMF. This is a condition that is the most serious form.

It allows for an automatic entitlement of benefits under the federal black lung program for total disability.

Miners with PMF suffer and die early. There is no cure. We don't know the names of these miners. We don't know the mines where they worked. There is no specific event that caused these tragedies. But these cases occurred because of exposure to too much dust day after day after day over decades, in a kind of slow-motion tragedy.

These cases resulted from systemic failure. Before black lung kills, it tortures its victims with breathlessness and suffering. These lives will not end with a bang, but with a whimper. These cases did not occur because we—and by "we," I mean the entire industry and operators, the union, the mine workers, MSHA and NIOSH—these cases did not occur because we don't know how to control dust.

Effective and feasible dust controls are well-known and are available throughout the industry. It was the failure to use these controls and the failure to enforce dust exposure limits, not the absence of knowledge that caused these cases.

In 1995, NIOSH recommended that the dust standard be reduced from two milligrams for a work-shift to one milligram for a 10-hour work-shift. This recommendation was based on a comprehensive review of the scientific literature concerning coal workers' pneumoconiosis and was based on data gained for U.S. miners in the United States over the past 30 years.

The previous standard was based on research done in the United Kingdom and had to be adapted to the present situation. The study is scientifically sound and was thoroughly reviewed by NIOSH and by external reviewers. It was also reviewed by MSHA's advisory committee on dust control which recommended that MSHA consider revising the dust standard based on the NIOSH criteria document.

There are several important technicalities in the proposed legislation which I will just describe briefly. First, the one milligram limit is expressed as a 10-hour average. The current two milligram limit is an average over a shift. Miners now work longer shifts and when they do, they inhale more dust. Consequently, it is appropriate to adjust the exposure limit for shift length.

Let me now turn to the personal dust monitor. I first became involved in mining dust issues in 1978. At that time, there was a direct-reading instrument being considered. Thirty years later, it is the same instrument and it is nowhere close to being implemented. The PDM provides real-time data at the time and the place where it is most useful.

Under the current system, dust data arrives 1 to 2 weeks after the sample is taken. During that time, conditions change. It is impossible to find out what exactly might have caused an overexposure. But with the PDM, we can identify when and where and why overexposure occurred.

One of the important benefits of the PDM is that by identifying dust sources in a timely manner and with precision, it makes it entirely feasible for mine operators to identify and reduce exposure to below the one milligram limit. I should note that—and I see my time is nearly up—but I should note that the union and a group of mine operators have been meeting over the past couple of years

to try and find common ground so we could support the use of the PDM. We have agreed on a number of important areas.

These are that MSHA should do all compliance sampling, which is consistent with what this legislation says; that the PDM should be the single approved instrument for measuring dust; and that MSHA should purchase the samplers and mine operators maintain them. There have been important changes in the industry over the past several years. I think the current technological environment allows us to take advantage of them.

I would be happy to answer questions when we are finished.

[The statement of Mr. Weeks follows:]

Prepared Statement of James L. Weeks, Sc.D., CIH, Consultant Industrial Hygienist to the United Mine Workers of America

Mr. Chairman and other members of the committee, my name is Jim Weeks, I am a consultant industrial hygienist for the United Mine Workers of America. Thank you for inviting me to testify concerning this legislation and more important, thank you for providing the leadership to improve the health and safety of miners. Mining, unfortunately, remains the most dangerous industry in the US and mines in the US remain the least safe of mines in other technologically and economically advanced countries. There is lots of room for improvement and this legislation should make a big difference for miners and their families.

I wish to speak to two aspects of the proposed legislation: First, revision of the dust standard from 2.0 mg/m3 to 1.0 mg/m3 for a ten hour work-shift and second, use of the personal dust monitor (PDM) for measuring exposure to respirable dust. If both of these measures are adopted and implemented, we can prevent black lung.

Over the past five years, several clusters of black lung cases have been identified among miners who started their mining careers well after the 2 mg/m3 standard became effective.(Antao et al. 2005; MMWR 2006) Many of these cases were of the more advanced form, progressive massive fibrosis, the condition that allows for an automatic entitlement for federal black lung benefits for total disability. Miners with PMF suffer and die early. Medical treatment can alleviate some of the symptoms but there is no cure.

We do not know the names of these miners, we do not know the mines where they worked, there is no specific event that caused these tragedies. The cases occurred because of exposure to too much dust day after day after day after day, for decades, in a slow motion tragedy. These cases resulted from systemic failures. These lives will not end with a bang but with a whimper. Before black lung kills, it tortures its victims with breathlessness and suffering. And it is all entirely preventable.

They did not occur, however, because we ("We" means the entire industry: operators, the Union, mine workers, MSHA, and NIOSH) do not know how to control dust. Effective and feasible dust controls are well known and available throughout the industry (Kissell FN 2003). It was the failure to use these controls and the failure to enforce dust exposure limits—not the absence of knowledge—that caused these cases.

In 1995, NIOSH recommended that the dust standard be reduced from 2.0 mg/m3 for a work shift to 1.0 mg/m3 for a ten hour work shift. (NIOSH 1995). This recommendation was based on a comprehensive review of the scientific literature concerning coal workers' pneumoconiosis (CWP) and was based on data gained for U.S. miners over the past thirty years. The previous standard was based on research done in the UK where dust concentration is measured differently and which has required adjustments of measurements in the US to conform to the British dust measurements, the so-called MRE-equivalent dust level. A standard based on experience with US miners and using instruments developed in the US is a substantial improvement.

This study is scientifically sound and was thoroughly reviewed by NIOSH and by other agencies in the Centers for Disease Control and by an international panel of external reviewers for its validity and the reliability of its findings. It was reviewed also by MSHA's Advisory Committee on dust control which recommended that MSHA "* * * consider revising the dust standard." based on the NIOSH Criteria Document. (p 50-54) The principal source of hesitation on the Advisory Committee was whether such a limit was feasible and not whether the science was valid.

There are several important technicalities in the proposed legislation. First, the 1 mg/m3 limit is expressed as a ten hour average. The current limit of 2 mg/m3

is an average over a "shift," assumed to be eight hours. That was the convention when the coal mine act of 1969 was adopted. Miners now work longer shifts and when they do, they inhale more dust. Consequently, we need to adjust the exposure limit so that it is proportionately lower for longer shifts to make it, as stated in the legislation, equivalent to 1 mg/m3 for ten hours. This is a common problem in industrial hygiene addressed by "Haber's Rule." (Armstrong TWA et al. 2005)

A second technicality is that current MSHA practice is to add an error factor to the exposure limit before they issue a citation for non-compliance. In effect, this raises the exposure limit. The reason they do this is so that they have a "high degree of confidence" that exposure is, in fact, above the exposure limit. The problem with this approach is that errors in measuring dust concentration can occur as an under-estimate as well as an over-estimate of true concentration. By only considering an over-estimates, they give the benefit of doubt to mine operators at the expense of miners' health. This legislation, the Advisory Committee, and the NIOSH Criteria Document all recommend against this practice (Advisory Committee 1996;NIOSH 1995).

This is not a trivial matter. Based on dust exposure data for longwall sections in 2003, if MSHA issued citations for measured dust concentration over 2 mg/m3 rather than their Criterion Threshold Value, they would have issued 36% more citations than they in fact did. (Weeks JL 2006)

Let me now turn to the Personal Dust Monitor (PDM). I first became involved in mining dust issues in mining in 1978 and the concern then was with a direct-reading dust instrument much like the PDM. Unfortunately, thirty years later, the hopes engendered by developments then remain unfulfilled. The PDM is a significant improvement over the current method for measuring dust concentration. (Volkwein JC et al. 2004) The current method uses a battery operated pump to collect respirable dust on a pre-weighed filter. This filter and supporting data are mailed to MSHA which weighs it and reports the concentration back to the mine operator. This process takes one to two weeks from the time the sample is taken to the time the information is returned to the mine operator. During this time, mining advances and conditions change. The information is practically useless for the purpose of finding dust sources and controlling exposure. It is also expensive. Cost per sample by the PDM is approximately one tenth of the cost per sample using the pump and filter.

The PDM, on the other hand, provides real-time data at the time and place where it is most useful. It measures dust concentration and displays it on a screen for the mine operator and the miner so that dust sources can be identified and controlled and so that the miner could take the necessary steps to prevent his or her own overexposure. Information can be down-loaded at the end of each shift and made available to all. The instrument has been tested in mines and is reliable and accurate. The manufacturer is ready to begin production.

One of the important benefits of the PDM is that by identifying dust sources in a timely manner and with precision, it makes it entirely feasible for mine operators to reduce exposure to below the proposed 1 mg/m3 exposure limit, thus removing concerns about whether it is feasible to reduce exposure below the 1 mg/m3 standard.

The Union and a group of mine operators have been meeting over the past couple of years in order to identify some common ground so that that we could support the use of the PDM. We have come to agreement on a number of important matters. These are that the PDM should be used for two purposes: compliance determination and surveillance (to identify sources), that MSHA should do all compliance sampling (agreeing with the Advisory Committee), that the PDM should be the single approved instrument for measuring dust exposure, and that MSHA should purchase and mine operators should maintain these instruments. Remaining areas of disagreement include how to determine non-compliance and how to evaluate dust exposure for extended work shifts.

There have been some important changes in the industry in recent years. On the negative side, fires, explosions, and respirable dust continue to take their toll. Work shifts have become longer. On the positive side, technological developments such as the PDM enable a much higher degree of control over dust concentrations, enabling us to reduce exposure and prevent black lung. The proposed legislation goes a long way to address these developments and I welcome it. I will be happy to answer any questions you have here and now or later, as these bills make their way through the process. Thanks again for your invitation.

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Chairwoman WOOLSEY. Thank you, Dr. Weeks.

Mr. Wright?

STATEMENT OF MICHAEL WRIGHT, DIRECTOR OF HEALTH, SAFETY AND ENVIRONMENT, UNITED STEELWORKERS

Mr. WRIGHT. Madam Chair, thanks for the opportunity to testify. My name is Michael Wright. I am the director of the health safety and environment department of the Steelworkers Union. We represent 850,000 workers in North America, including the majority of unionized metal and nonmetal miners in the United States and Canada.

Dennis O'Dell and Jim Weeks talked about the need for this legislation in coal mining. Indeed, much of the MINER Act and much of H.R. 2768 is focused on underground coal mines. That is appropriate, given the terrible death toll in underground coal mines last year.

However, MSHA's jurisdiction extends to many mines beyond coal and to surface mines as well. In 2004, there were 51,000 workers in underground mines, although many of them worked in surface operations like hoists and prep plants. There were 151,000 workers in surface mines. Coal accounts for about one-third of our nation's miners, 73,000 out of a total of 220,000.

Last year, there were almost twice as many deaths in coal mining as in metal and nonmetal operations, 47 versus 25. But in 2005, the year previous, 35 metal and nonmetal miners died, as against 22 coal miners. So far this year, that pattern is repeating with 15 deaths in metal and nonmetal, and 9 in coal.

Deaths in metal and nonmetal mining are as varied as the operations themselves. My written testimony gives several recent examples, all for mines organized by our union. I will summarize them: a miner killed in an underground limestone mine when a farm-type tractor that never should have been allowed underground, flipped

over and crushed him; two miners killed in the same surface iron mine in six months—one by electrocution, one when a number of defective bolts on a stabilizer snapped off, causing a large mobile drill to tip over; one worker who was sprayed with toxic and corrosive hydrogen fluoride in an operation you might not think of as a mine—an aluminum refinery.

Over the past few years, metal and nonmetal miners have also died in rock bursts, roof falls, falls from height, fires, explosions, drownings, and in many other ways.

Some of the provisions of the S-MINER Act would make a big difference, particularly the language on the pattern of violations, unpaid penalties, and penalty assessment, as well as the ombudsman. We need this bill just as much in metal/nonmetal as we do in coal.

Miners also die from occupational illnesses, and not just black lung. We now have 58 confirmed cases of mesothelioma among miners on the Iron Range in Minnesota. Mesothelioma is of course caused by asbestos exposure. That is a rate double the rate expected for the general population. MSHA's asbestos standard is still where OSHA's was 20 years ago—20 times higher than the current OSHA standard. That is a fact that the Miner Health Enhancement Act would quickly correct.

Workers in cement plants regulated by MSHA are exposed to hexavalent chromium, a potent carcinogen, at a level more than 10 times higher than the current OSHA standard. We have actually challenged that current OSHA standard in court as being lethally inadequate. We think it should be five times lower. That is where the NIOSH recommended the exposure limits as it should be. H.R. 2769 would make that level the law.

The MSHA hazard communications standard discriminates against miners by denying them information that has to be disclosed to their brothers and sisters in general industry. It is absurd that OSHA and MSHA have different rules governing what health information a worker is entitled to. H.R. 2769 would fix that as well.

In my written testimony, there are some suggestions for fine-tuning both bills and I hope you give those suggestions some consideration. But the most important thing is that we need this legislation. The mine operators and their trade association would have it otherwise. "Let's not act too quickly," they say, "let's wait." Well, perhaps they can afford to. Our nation's miners cannot.

Let me make one other point for those who think that Congress did enough with the MINER Act and we don't need to act now. How do you say to an iron miner, exposed to 20 times the level of asbestos that OSHA would allow, not to worry about that, because last year we required that more self-contained self-rescuers be required in coal mines? How do you tell a cement plant worker exposed to hexavalent chromium that she shouldn't worry about that, because last year we fixed another problem that she doesn't have? Every miner deserves protection.

So thank you, Madam Chair and the cosponsors and all the members of the committee for your attention to this important issue.

[The statement of Mr. Wright follows:]

Prepared Statement of Michael J. Wright, Director of Health, Safety and Environment, United Steelworkers

Madam Chair, Congressman Miller and other members of the Subcommittee, my name is Michael Wright. I am the Director of Health, Safety and Environment for the United Steelworkers, a union representing 850,000 workers in North America, including the majority of unionized metal and non-metal miners in the United States and Canada.

Last year, I had the honor of testifying at the February 13 Congressional Forum on Mine Safety and Health convened by Congressman Miller. Let me say what a pleasure it is to be here today, at an actual Congressional hearing considering mine safety—a hearing examining what more we should do after the passage of the MINER Act and the new MSHA rules that resulted from it. Let me also express our gratitude to Congressman Miller, Congresswoman Woolsey, and all the members of the committee who helped pass that legislation and who continue to support safe working conditions, not just for miners, but for all Americans.

Dennis O'Dell and Jim Weeks have talked about the need for this legislation in coal mining. Indeed, most of the MINER Act and much of H.R. 2768 is focused on underground coal mines. That is appropriate, given the terrible death toll in underground coal mines last year. However MSHA's jurisdiction extends to many mines beyond coal, and to surface mines as well. In 2004, there were 51,000 workers at underground mines, although many of them worked in surface operations like hoists and prep plants. There were 151,000 workers in surface mines. Coal accounts for about a third of our nation's miners—73,000 out of a total of 222,000. Last year there were almost twice as many deaths in coal mining as in metal and non-metal operations (47 vs. 25), but in 2005, 35 metal/non-metal miners died as against 22 coal miners. So far this year, that pattern is repeating, with 15 deaths in metal/non-metal and 9 in coal.

Deaths in metal and non-metal mines are as varied as the operations themselves. Let me give just a few examples, all from mines organized by our union. On January 31, 2005, David Wilson died at the Carmuse Corporation underground limestone mine in Butler, Kentucky, when the tractor he was operating flipped over and crushed him. The tractor had ridden up on a pillar. The front wheels were set very close together, so the tractor turned over easily. It also had no roll-over protection.

On October 11, 2006, Andrew Reed was electrocuted at the Cleveland Cliffs United Taconite mine in Eveleth, Minnesota. He was a supervisor doing electrical troubleshooting.

On January 2 of this year, John Dorton was killed at the Alcoa alumina refinery in Point Comfort, Texas. He was hit with a sudden release of hydrogen fluoride while he was cleaning out a valve. The company had not supplied the right protective equipment; nor was the valve cleaning operation sufficient to prevent the release. That plant is not a mine in the traditional sense, but because it processes minerals it is rightly under MSHA's jurisdiction.

On April 18 of this year, Deane Driscoll died at same United Taconite mine in Eveleth, Minnesota where Andrew Reed died six months earlier. He was operating a large mobile drill when several bolts snapped off a stabilizing cylinder, one by one, each failure leading to the next, causing the drill to tip and ejecting him from the cab. We do not yet know why the bolts failed, but they were either poorly designed or defective in their manufacture.

Over the past few years, metal/nonmetal miners have also died in rock bursts, roof falls, fires, falls from height, in explosions and in many other ways. These deaths normally occur one at a time. They do not make the national news. But taken together, the toll is far greater than the toll from disasters like Sago. Of course, in the long run even more miners die from health hazards like coal dust, silica and diesel exhaust, and those deaths do not appear in the official statistics.

Some of the changes over the past year will make a real difference. The new penalty structure gives MSHA increased authority to punish chronic violators, although the S-MINER Act would make further improvements. Immediate notification of accidents allows MSHA to better control an accident scene, and to help ensure that the problem does not spread further. After years of controversy, the metal/nonmetal diesel standard is finally in place, and should be free from further court challenges. Your committee facilitated many of these changes, either directly through the MINER Act, or by just keeping the heat on the Department of Labor.

But more is needed. The S-MINER and the Miner Health Enhancement Acts would be great steps forward, and we are enthusiastic supporters of both. At the same time, both could benefit from some fine-tuning. Let me discuss three aspects of the bills in particular.

First, we believe that many of the provisions of the MINER Act and the S-MINER Bill, designed to protect miners in emergency situations, should be extended to metal/nonmetal mines. We certainly support the advisory committee required by Section 4(j) of H.R. 2768, but some things could be done now. One example is the use of flame-resistant conveyor belts. Belt fires are less risky in metal/nonmetal mines, since the belts generally carry non-flammable materials. But belt fires are still a potential hazard, and there is no reason to allow inferior belts in any mine.

We also believe that self-contained self-rescuers should be required in most underground metal/nonmetal mines. It is ironic that much of the impetus for SCSRs came from the 1972 disaster at the Sunshine Mine near Kellogg, Idaho—a silver mine—where an underground fire killed 91 miners, all from carbon monoxide poisoning. Most of them were members of our union. Some of the factors that led to the fire have been eliminated by MSHA regulations, but 45% of the mine fires reported to MSHA between 1991 and 2000 occurred in metal/nonmetal mines.[1] There are plenty of combustible materials in such mines—belts, fuels for mobile equipment and mobile equipment itself,[2] old timbers,[3] methane, combustible ores like gilsonite and other materials. The January 2006 fire in a Saskatchewan potash mine, which forced 72 miners into a refuge chamber for 28 hours because of toxic gases and smoke, started in some plastic piping. In short, there is no reason why Congress should not require MSHA to initiate prompt rulemaking extending the protection of SCSRs to underground metal/nonmetal miners.

Second, let me comment briefly on the role of the Chemical Safety and Hazard Investigation Board, as contained in Section 6(g)(3) of H.R 2768. We are great fans of the CSB; they have done a superb job in recent investigations, especially the investigation of the March 23, 2005 disaster at BP's Texas City Refinery, of which this Committee is well aware. The CSB could be quite useful in the investigations of chemical accidents, like the fatal hydrogen fluoride release at Alcoa Point Comfort which I mentioned earlier. But they have no expertise in mine issues like roof falls or belt fires. The CSB is needed outside of mining, because OSHA typically does not do accident investigations beyond what is needed to determine compliance. Nor does OSHA issue accident reports. MSHA, however, does. And in our experience, MSHA's accident reports are excellent, concentrating on root causes well beyond mere compliance issues. The USW represents most of the unionized workers in chemical plants and oil refineries. That is where we need the CSB, not in duplicating what MSHA already does well.

Nevertheless, there should be a limited role for the CSB in mining. First, MSHA should have the ability to ask the CSB for help in the areas of its expertise, such as where dangerous chemicals are involved, or in explosions. Second, the CSB should have the power to initiate its own independent investigations in chemical safety matters in mining. It can be argued that the CSB already has that authority, but the S-MINER Act could clarify it.

Third, and turning to H.R. 2769, we applaud the bill's authors, Congressmen Miller and Rahall, for addressing the issues of air contaminants, asbestos and hazard communication. As the bill recognizes, the MSHA air contaminant standards are badly out of date. We agree that the NIOSH Recommended Exposure Limits provide the best list through which the new and more protective permissible exposure limits could be established quickly. However, there are two problems with this approach which will have to be overcome. Many of the carcinogens referenced by NIOSH do not have quantitative PELs. Instead, they are simply designated as carcinogens, with the implication that they be controlled to the lowest feasible level. Two examples are cadmium and welding fumes. "Lowest feasible level" works fine as a recommendation, but it lacks the specificity required for a regulation. One solution would to be to default to the consensus standards established by the American Conference of Governmental Industrial Hygienists where a numeric REL does not exist. After all, the ACGIH threshold limit values were the basis for the first set of MSHA and OSHA air contaminant standards.

The other problem is potentially more serious. Many of the NIOSH RELs were adopted without a consideration of technological feasibility, particularly in mining. It would be nice to set standards solely on the basis of health effects, but up until now the laws governing OSHA, MSHA and hazardous air pollutants under EPA have always recognized that standards must be not only protective, but must be fea-

[1] Ronald S. Conti, "Responders to Underground Mine Fires," NIOSH Pittsburgh Research Laboratory.

[2] Forty-six percent of metal/nonmetal fires in the study cited above involved mobile equipment.

[3] Old timbers were a major cause of the Sunshine Mine fire, and more recently, a February 8, 2001 fire at the Homestake Gold Mine in Lead, SD, which required the evacuation of 37 miners.

sible as well. Therefore, we would suggest a slight modification of H.R. 2769 which would give MSHA the discretion (but not the requirement) to modify the PEL through notice and comment rulemaking if the Agency determines that the NIOSH REL may be infeasible in mining.

We support Section 4 of the bill, on asbestos, with one addition. MSHA should certainly adopt the OSHA standard for asbestos, but should be free to add additional provisions. For example, MSHA might wish to include additional asbestiform minerals to the coverage of the standard, or work practices applicable to mining.

Finally, we fully support Section 5, which would require MSHA to go back to the October 2000 Interim Final Rule on Hazard Communication in lieu of the June 2002 final rule. Under the interim final rule, suppliers had to update material safety data sheets whenever the ACGIH or recognized international organizations like the International Agency for Research on Cancer updated their recommendations. Under the final rule, suppliers can now withhold that information from users.

We've talked to chemical suppliers who think this change was brainless. They have no intention of writing different MSDSs for OSHA and MSHA jurisdictions. I have also talked to two tort lawyers who, when they stopped laughing, said how stupid this change really was. Imagine a case where a worker or consumer was harmed by product labeled under the MSHA rules. Suppose it became known that, not only had the supplier failed to disclose the latest information to the user, but had even lobbied the government for the right to cover it up. The liability would be enormous. For the good—not only of miners—but for the industry itself, Congress should reverse this absurdity.

Again let me express our support for both the bills before you. The handful of changes we recommend are minor; we believe they could be made easily.

Thank you again, Madam Chair for the opportunity to testify and for your efforts on behalf of miners and all working Americans.

Chairwoman WOOLSEY. Thank you, Mr. Wright, and thank you for calling it back to our attention that we are talking about all mines and all miners. Thank you very much.

I now recognize myself for 5 minutes for questions.

Mr. Stricklin, thank you for being here and talking to us again about the technical assistance that we need in these bills.

I understand that the concerns you raised in your statement this morning are virtually the same ones you discussed at a meeting that you were invited to with our staffs, and I mean, staffs, industry representatives, and meeting with the majority and the minority. I appreciate you for the time and your investment in that.

But today's testimony gives me an opportunity to say on behalf of our members that we need specific questions for improving this bill. We have them. We need them from you, because it is the obligation of my subcommittee to protect health and safety of the miners. I want everybody to know we are not going to get stalled along the way.

So what we want to do is make it as convenient and easy as possible for you to join us in pressing forward on identifying what problems need to be addressed. So what I am asking you is can you and other experts from your department commit to some substantial time in the next week or two with our staffs on both sides of the aisle, and other interested parties, to work through these technical questions that you have identified?

I also want to bring forward that we have heard about enforcement mechanisms that are just not being adhered to. They are being ignored. We need to bring that into the conversation also.

Mr. STRICKLIN. We would be more than happy to do anything we could to meet with anybody willing to listen to us.

Chairwoman WOOLSEY. All right. We will count on that. I think it is very, very important because we need you at the table, and we need those questions, and we need the discussion about it.

So, Dr. Weeks, the United Kingdom, what have been the results of their lowering of the dust particles?

Mr. WEEKS. In the U.K.?

Chairwoman WOOLSEY. In the U.K.

Mr. WEEKS. There are very few miners in the U.K. Most of the mines are shut down. They have had great success in reducing the incidence of CWP, and we have, too, in this country over the past several years.

Chairwoman WOOLSEY. So do you think that miners should be obligated to undergo X-rays every few years? Upon hire, for one, so there is a base, and then to determine if they have lung diseases, and to follow, you know, their careers and if there are changes along the way?

Mr. WEEKS. Right now, they are required to have a chest X-ray when they first start their work as miners. There is a follow-up film I think 2 years or so after that. After that time period, mine operators are required to offer the films to miners, but miners are not obligated to take them. Many do and many don't.

If the question that you are raising is should miners be required to take these films, the answer is clearly no, on my part, because it is used against them in employment. If a miner has a positive film for CWP, effectively he is blacklisted from employment in the mines. So until that problem is fixed, I would be reluctant to require them to take the films.

Chairwoman WOOLSEY. So how would you fix that problem? Should not that information be confidential and locked away?

Mr. WEEKS. It is required to be confidential now. It doesn't always occur that way, that it is confidential. That part of the program is simply not very well-enforced. So there are breaches of confidentiality in terms of the results of miners' chest X-ray films. I think it is due to lack of enforcement. Until that is fixed, miners should have control over the film themselves and they can do with it what they will.

Chairwoman WOOLSEY. So, Mr. Wright, would you like to chime in on this?

Mr. WRIGHT. I think there is a problem with requiring people to take medical exams under law. We do it for people whose jobs involve public safety, but it is not generally the practice to say that workers have to take medical exams for their own supposed protection.

We have seen cases where—and this is not in coal mining, because we don't represent people in coal mining in this country—but we have seen cases where an employer says to a worker, pre-hire, you have to turn over all your medical records. Now, that may or may not be legal, but in fact if you refuse to do it, you don't get the job.

So the current system puts miners and many other workers in a kind of a catch-22. If you take the exams, then get an adverse finding, your job prospects are probably finished.

So unless we can solve that problem by saying people have a right to employment and that employers do not have a right to ask

those questions, and that that is enforceable, we are going to put miners in a terrible situation.

Chairwoman WOOLSEY. Right. Thank you very much. That was good information for me.

Mr. Wilson?

Mr. WILSON. Thank you, Madam Chairman.

I would like to thank all four of you for being here today.

But as the testimony proceeded, it was really clear to me there should be three parties here. You have the regulators. You have the representatives of the workers. But by not having the industry here, I think that is really wrong. The Mining Association has an excellent reputation of being strongly, obviously, in favor of health and safety of the people who work with them.

Additionally, to make it worse, there were references to what their positions would be if they were here. That is just simply not right.

So I hope in the future that we will have hearings where we have the regulator, the workers and the industry affected, particularly because I know the sincerity of the people here, but also the industry certainly cares about the people who work for them—their health and safety.

As we proceed, Mr. Stricklin, your very thorough testimony discusses 16 provisions of the bill that you have technical concerns. Can you highlight those that you feel weaken the current MSHA safety and health standards, leaving the miners less protected? Can you also explain how the bill would impact the ability of the agency to write citations?

Mr. STRICKLIN. A couple of the ones that we feel lessen is the multiple gas detector. The way that H.R. 2768 says if a person is going to work alone, he may have a detector with him. The way we enforce the regulations today, he will have a detector with him. It is the kind of wiggle room sometimes you get into when you use the word "may" in a regulation. It is tough to enforce.

Secondly is the immediate notification part of the regulation. It basically gives a couple of different options—15 minutes and 1 hour. Right now, every accident needs to be reported within 15 minutes, so we feel if we go to the 15 minutes or the 1-hour component of the new reg that it lessens what is in place right now.

Mr. WILSON. Additionally, the legislation bans the use of belt air. Can you present situations where belt air would improve safety? Does this legislation take into account the recommendations of the belt air technical safety study panel that was created by the MINER Act? Has the agency identified any instances where the use of belt air resulted in a coal mine fatality?

Mr. STRICKLIN. I guess our position, based on trying to implement the MINER Act, I would prefer to wait until Dr. Weeks and his group have had an opportunity to finish their panel work. I think that is due at the end of this year. As far as a fatality occurring because of a belt fire, I don't now of any.

Mr. WILSON. Additionally, if a new type of belt were required, as suggested by H.R. 2768, would MSHA be required to deem it safe? There is a long history of increasing belt safety to include extensive debate over the appropriate testing of the subject, the belt. Can you

provide an overview of this subject and explain how the bill would address this?

Mr. STRICKLIN. All belts have a flammability rating to them, and there is a standard in the regulation. Anything that would change would have to go through our approval and certification center in Triadelphia, West Virginia. Basically, they evaluate it and they determine how quickly a belt would burn. Naturally, any test or any requirement in a new regulation would have to be tested by them to ensure that it met what Congress intended for it to have in the regulation.

Mr. WILSON. And also under the provisions concerning inspections of the self-contained self-rescuers, how many units do you estimate would have to be tested annually? Wouldn't this greatly reduce the number of SCSRs available to protect miners?

Mr. STRICKLIN. We think when the MINER Act is fully implemented and all the purchase orders are put in place, that we are going to have approximately 200,000 self-rescuers in place in mines. This regulation discusses 5 percent every 6 months, which indicates in 1 year's time 20,000 SCSRs will need to be tested.

Mr. WILSON. Is there personnel for that?

Mr. STRICKLIN. We don't think we have the personnel to do that. I think another issue would be whether NIOSH has enough personnel, because as we get the SCSRs, we would have to give them to NIOSH. They would be the group of folks who would be testing these SCSRs.

Mr. WILSON. Do miners themselves or the industry or others test the equipment?

Mr. STRICKLIN. A mine operator, I guess, could possibly have an independent test. I think right now there are about 200 per year that are tested. So as we would increase to 20,000, that is naturally a large increase from 200 per year that we now see. So there would have to be a lot of gearing up for that.

Mr. WILSON. Thank you very much.

Mr. STRICKLIN. You are welcome.

Chairwoman WOOLSEY. I would like to note that because the ranking member had to spend part of his testimony scolding the chairwoman, I gave him a little more time. [Laughter.]

Mr. Bishop? Oh, sorry.

Mr. Hare?

Mr. HARE. Thank you, Madam Chair. I am a lot better looking than Mr. Bishop anyway. [Laughter.]

I want to thank you all for coming.

You know, I have to say to my friend from Minnesota when he talked about only 20 percent of miners are organized in the union, I hope a couple of things. One, I hope that increases significantly, and I am sure that it will. But I don't think there is any miner from my perspective that doesn't want to be able to go to work and have the feeling they can come home and see their family, whether they belong to a union or not. So I appreciate the fact that you are all here today.

Mr. O'Dell, you are, I think, our resident expert on this because you were a miner. I don't know if anybody on this committee has ever mined. I certainly haven't. So I think you can speak with a

great deal of experience for actually being down in the mines and to talk about some of this stuff.

You know, we have heard a lot about the belt air. Why do you think the mine operators want to use the belt air to ventilate the mines? Have you ever seen a valid safety reason for doing that?

Mr. O'DELL. If I may, I was a rank-and-file miner at the time the belt air petitions started coming about. I was also chairman of the safety committee at the Robins mine number 95 in Harrison County, West Virginia. The mine superintendent called me in and said, "Dennis, we are getting behind on the development of our sections, and the only way that we can continue to keep up with the development of our sections is to reduce the headings that we drive up."

At the time, we had some headings, some sections that were eight headings, and some that were six, and some that were four. They wanted to reduce down to a three-entry system, plain and simple, because of not being able to properly manage their mine.

So they started filing for a petition for modifications for the use of belt air. You lose headings so you had to use the belt entry to get air up into the section to be able to ventilate properly. That is my personal experience and that is the truth of how this whole thing came about—mismanagement on the operators.

As I said before in my testimony, I have researched NIOSH's homepage and have not found anything about the use of belt air that has helped to improve miner health and safety.

Mr. HARE. Okay. I appreciate that.

Mr. Wright, I understand from your testimony that you, the steelworkers, believe that this legislation doesn't go far enough. Some of our Republican colleagues and MSHA and the industry believe we have gone too far.

From your perspective, can you explain why you believe we should in fact be doing more than we have been doing on this?

Mr. WRIGHT. There were a couple of things that are in the S-MINER Act that apply to coal mines that we think should be seriously considered for metal/nonmetal mines as well. One of those is we don't like flammable belts either. Belts in metal/nonmetal generally don't carry flammable materials like coal, but a belt fire can be a pretty miserable thing. You know, you have basically burning rubber and in an underground environment, if you want a confined space, that can be a serious problem. And we have had some belt fires.

The other thing we think we need ultimately is self-contained self-rescuers. We agree that the need in coal is greater currently, but we shouldn't forget that the biggest mine disaster in the past 40 years was an underground fire in a metal/nonmetal mine in Kellogg, Idaho. The Sunshine Mine in 1972 killed 91 miners, all by carbon monoxide poisoning, and they all could have been saved with self-contained self-rescuers.

It is ironic that it was that fire that helped not only create MSHA through the passage of the MSHA Act 5 years later, but also began to get self-contained self-rescuers into mines, but not into metal/nonmetal mines. A lot of the things we have done in metal/nonmetal make that kind of a fire less likely. But is it impossible? I don't think so. Forty-five percent of mine fires are in metal/

nonmetal mines. So we would like to see self-contained self-rescuers there as well.

Those are just two areas where we think that improvements can be made. There are other things that we think can be some fine-tuning in the bills, like always happens in the markup process. But we think on balance both bills are critically needed not just in coal mining, but in metal/nonmetal mining as well.

Mr. HARE. I am almost out of time.

Mr. Stricklin, just a quick question. In your professional opinion, why do you believe that black lung disease is on the rise again and being found in younger workers? What would you suggest that we do about it?

Mr. STRICKLIN. That is a complex question. There are a lot of different components of it. It deals I think with production, the amount of production being mined; the extended hours of the employees. I do think we need to reevaluate the regulations that have been in place for over 35 years.

As Dr. Weeks talked about, when they were implemented it was 8-hour days for 5 days a week, and we have changed that all now, as well as the production. I think a lot of that has to do with what we are seeing as an increase in black lung.

Chairwoman WOOLSEY. All right. If the gentleman would yield just a second to me, I would suggest that that would be a good written response question that we could use on this committee.

Mr. Kline?

Mr. KLINE. Thank you, Madam Chair.

I thank all of the witnesses for being here. Despite our parliamentary discussions up here, we do welcome all of you.

We are glad to have the union representatives here. I would just say again that I think we are missing a key stakeholder here and I wish that we had at least one representative of the National Mining Association, and apparently we ought to have the representation of the Industrial Minerals Association as well.

There is an entirely new line of concerns that have been introduced today by Mr. Wright. I think Mr. Wright said the mine operators would have it otherwise, and of course we don't know that because there is no representative of the mine operators here.

Mr. O'Dell said that industry may try to argue, or you may hear today that this will affect small operators, or some say it would be a burden—but again, we don't have any representative of the National Mining Association to respond to any of that.

We really are trying to, I hope, come to the end of this process with good public policy that will enhance the safety of miners. We would just like to have all the stakeholders here.

Mr. Stricklin, let's see if we can get a couple of pieces of this because there is some new stuff that has come up. The S-MINER Act requires hardening of communication equipment. Your statement discusses how this would adversely impact the system. Can you explain a little more about what hardening means and how can that be an adverse effect?

Mr. STRICKLIN. I guess we are concerned that if we accept a hardened system or a leaky feeder system, that we may keep technology from advancing to where the MINER Act has to be in 2009, and that was with wireless communication. We think we have a

shot at getting to wireless communication. We are afraid that if we accept less than that, that the technology will stop.

Secondly——

Mr. KLINE. Excuse me. And therefore miners would be less safe?

Mr. STRICKLIN. I have been underground in probably 10 to 15 explosion investigations. Quite frankly, after an explosion, there is not a whole lot left. I wouldn't expect whether this is a hardened line or just a leaky feeder line, it is not going to be there after an explosion. So I think we need to all try to get to this wireless communication that the MINER Act in 2006 asked us to get to.

Mr. KLINE. Okay.

Mr. STRICKLIN. Secondly, it is my understanding that by hardening the leaky feeder, it takes away from the electronics of the system as well, which means the communication won't be as good if you harden the line, rather than just letting the line lay freely in the entry.

Mr. KLINE. Thank you.

By the way, I should say to all of you who have worked down in mines, my hat is off to you. I took one trip down. That was more than sufficient. It is an amazing, amazing job.

Let me see if we can explore another thing here, because again this was new in this legislation, so I am gain going to come back to you, Mr. Stricklin, because of my limited time. H.R. 2768 would consider having the Chemical Safety Board brought in for mine investigations.

As I understand it, this body has no regulatory authority, legal standing, or in fact mining capability. Can you, in the time that we have left, explain MSHA's investigation procedures and what impact it would have to have these additional parties brought into investigations?

Mr. STRICKLIN. I think it makes it difficult. I guess we would like the ability, as we did if we go back to Sago. We dealt with a lightning issue. We are okay with bringing someone in if we need assistance. We are just concerned that if we have another government agency doing the investigation as well as us, number one, we don't think they have the expertise in mining.

Number two, we don't think we have anything to hide. We are all career people. We do what we think is the right thing for the right reasons, and find the cause of the accident.

Number three, we are concerned that if the Chemical Board does an investigation and finds things different than us, if we were to take action against a mine operator with civil or criminal penalty, if their report was different than ours, it would really taint probably what we could ultimately do.

In addition, the Chemical Board wouldn't have the authority to issue any violations to the cause of the accident. So that would be our major concerns with that.

Mr. KLINE. Okay. I see the light is about to change. Thank you.

I yield back, Madam Chair.

Chairwoman WOOLSEY. Mr. Bishop?

Mr. BISHOP. Thank you, Madam Chair. Thank you very much for holding this hearing.

Mr. O'Dell, in your testimony you quote the chair of the Mine Safety Technology and Training Commission in which he sort of

lauds the notion of voluntary measures to improve safety, and suggests that legislation would stifle incentives to impose voluntary steps.

I guess I am having a couple of problems with this. Number one, I would like to think that the law would constitute a pretty powerful incentive. I am just trying to understand.

Perhaps, Mr. Stricklin, from your experience working with MSHA as long as you have, why is it that legislation would impose a restriction on good mine operators if the intent of the legislation is to make miners safer? And if good mine operators have that same goal, why would legislation be viewed as a disincentive to doing the right thing?

I understand it is not your statement. I am just asking you from your perspective of working with this issue for a long time.

Mr. STRICKLIN. When I look at mine operators, I don't look at good operators or bad operators. They are all operators, and they all need to comply with the regulations. So I don't see any difference in any operations when I look out at what I need to do.

Mr. BISHOP. I guess the point I am searching for is that there seems to be the suggestion here that the way we ought to be approaching this is by encouraging voluntary means to improve mine safety, as opposed to legislative means. I am struggling to understand why legislative means would be less effective than voluntary means.

Mr. STRICKLIN. I guess we at MSHA would like to see all the voluntary change being made on their own, naturally. That makes our job a whole lot easier. I would get a lot more comfort out of going in and shaking someone's hand and saying they did it right, rather than having to issue violations. I don't have any incentive to issue violations. If they are there, we issue them.

I think regulations just back up what really should be done. If a mine operator is not doing it, then it gives us the ability to go in and take care of business if they haven't done it on their own.

Mr. BISHOP. Okay. Thank you.

My other question is for Mr. O'Dell and Dr. Weeks and Mr. Wright. Mr. Stricklin's testimony includes 16 areas where he believes our legislation is either deficient or in error or goes too far.

My question to the three of you, and I know this is very broad: Are there any that jump off the page as particularly saying, you know what, he is absolutely right; we need to change the legislation? Or he is absolutely wrong and we need to set aside the objections that he has raised?

Mr. O'DELL. If I may, I have not seen all 16 of those that they referred to yet. I mean, I heard him speak about a few of them today, but there is, let's say for example, he speaks about the leaky feeder system. That is actually something that the industry was pushing. That is something that they would have liked to have seen take place.

We are not saying that that is where we need to stop. We are saying that is better than what miners are afforded today. We agree with the agency. We still need to push forward because we also believe that the wireless technology is something that is achievable, but we need to do better today than what we have.

I mean, we have telephone systems in the coal mines that aren't much more than two tin cups with a piece of string behind them, virtually two mine phones with two pieces of wire hooked up with batteries, and that is about it. Just hardening the system would be a lot better than what we have today. By 2009, we are still optimistic than we can get the wireless systems in the mines as well.

There are others that I think that we are all open to, but I think we need to do it. Rather than sit and wait, there are things out there today. He spoke about the borehole cases coming into sample behind seals. I was part of an investigation a few years ago, where lightning struck the casing of a borehole. We saw traces that lightning hit that case and traveled underground and exploded behind the seals. Luckily, they had seals put in place that stopped that from coming out to harm the men. They were bulkhead seals.

The problem with that was had the operator cut that casing off before they can move forward, that may not have occurred. So there are ways to get around that, as well. So you know, I agree with Mr. Stricklin on some things. I disagree with him on others, but to actually speak on all 16 of those, I would have to look at them. I will be happy to answer that.

Mr. BISHOP. Thank you.

I see my time has expired. Thank you, Madam Chair.

Chairwoman WOOLSEY. Mr. Price?

Mr. PRICE. Thank you, Madam Chair.

I want to apologize for not being here earlier for your statements. I had a conflict, but I understand that there were some interesting comments and actions that occurred.

My previous life was as a physician. I took care of patients. One of the things I knew was that I needed all the information I could get my hands on in order to make a reasonable decision. So it disturbs me that apparently we have a panel that doesn't include a significant stakeholder or stakeholders in an effort to try to get all the information so that we have what is necessary to make appropriate recommendations and decisions.

Madam Chair, I think that is important. I sincerely think that is important. I think we ought to make certain that the next hearing that we have on this issue that we have all stakeholders present.

Mr. O'Dell, you have just made a comment saying that the industry—I think you said the industry—I think you said wants a leaky feeder system. How do you know that?

Mr. O'DELL. I serve as the chair on a UMWA BCOA Committee. It is a joint committee in which all operators sit in and we sit around and we discuss the improvements and what we can come to agreements on safety.

Mr. PRICE. Shouldn't we have the benefit of that information as well? Shouldn't industry be sitting right here with us and sharing that with us? Wouldn't that be appropriate?

Mr. O'DELL. I can't answer that. I am a guest.

Mr. PRICE. This committee takes this work very, very seriously. Charlie Norwood, who was a dear colleague and friend, represented the 10th District in Georgia, he was passionate about this issue. He worked for years to try to improve laws as they relate to mine safety.

There were a number of things that he worked one. One of the things he worked for years on was bringing about MSHA and the MINER Act that was signed into law in June 2006. I think it is important that people understand and appreciate what has gone on since that point.

In June of 2006, the law was signed into place and MSHA implements new penalties for late accident notification. In September, MSHA publishes proposed rules for increased civil penalties. In October of 2006, MSHA implements new penalties for flagrant violations. In December, MSHA implements a final rule to strengthen mine evacuation practices.

In February of this year, MSHA issues a bulletin requiring breathable air for trapped miners. In March of this year, MSHA implements new penalties or safety and health violations. In May of this year, they published the emergency temporary standard on explosion in abandoned areas.

They have moved in the following directions requiring all coal mines to submit to MSHA their emergency response plans, and all were submitted, requiring more self-contained self-rescuer devices for each miner in every underground coal mine—something that I know was said was a priority, that has indeed been required and implemented as of December of last year—there is a backlog, obviously, in the industry, but it is a requirement, requiring fire-resistant evacuation lifelines in all underground coal mines within 3 years as specified by the MINER Act; mandating additional safety training in the use of self-contained self-rescuers in all underground coal mines.

There is a lot of work that has been done, a lot of good work that has been done. The list goes on and on. So I guess I would ask anybody, what additional steps have members taken in the mining industry to improve safety, other than the ones that I have mentioned, the ones that you know about, what additional steps have occurred?

Mr. Wright?

Mr. WRIGHT. I want to make sure that I understand the question. Is it what additional steps should be taken or what additional steps——

Mr. PRICE. What additional steps have been taken?

Mr. WRIGHT. Have been taken. Well, in metal/nonmetal industry, not very much. We are still very concerned about some of the health risks in that industry.

Mr. PRICE. I need to reclaim my time for a minute. I need to reclaim my time because I am on yellow. I appreciate that. I appreciate you saying "not very much." But wouldn't it be nice if I could turn to the industry and say, what else have you done? It is I think a travesty, this process that we are going through right now, that we don't have that kind of representation sitting at this table.

That is not your fault, but this is the only opportunity that we have to officially state that we believe this is a flawed process, and a flawed process—just as a flawed process in the diagnosis of a patient—can't get to the right treatment.

I yield back the balance of my time.

Chairwoman WOOLSEY. Mr. Payne?

Mr. PAYNE. Thank you very much.

You know, you read off a whole litany of things that have been done, but we still had 24 miners dead. So perhaps we even have much further to go since with all of those things that were just read, you would think there would be no deaths. I don't know whether the fact that it is only 24 makes that list impressive. It is not impressive to me. If things can still be done, they ought to be done.

We have heard from mine owners. We had a bunch of them here, or at least they were sitting in the audience, and I think they testified at a full committee hearing twice. So it is not that we haven't heard from mine owners. We hear from them all the time.

Mr. PRICE. Will the gentleman yield?

Mr. PAYNE. Absolutely.

Mr. PRICE. I may be mistaken, but I don't think that we have heard from the industry on these bills. And I suspect you would agree that when comment is made about the industry, that they ought to be able to respond.

Mr. PAYNE. Reclaiming my time, you are wrong. We have had the industry here and they have had an opportunity to respond. They have been here dealing with the mine safety, mines in general. They certainly didn't come here to talk about airplanes. So you know, they talk about mines.

Let me just ask a couple of questions. Mr. O'Dell, you understand that the inspector general has objected to a provision in the legislation establishing the Office of Ombudsman. Why do you feel that this provision is necessary? Or why do you feel that the inspector general opposes it?

Mr. O'DELL. If I may, sir, mining is a whole different world. I can tell you as a coal miner, and that is what I consider myself—a coal miner. When you are underground, it is a whole different world. In many mines which I worked in, we have more of a voice than some of those that work at non-represented mines, non-union mines. There is an intimidation factor. Miners need somebody that they can go to in the event that they need to seek help or talk to someone.

The codeaphone that is put in place today has failed. It has failed drastically. This is no surprise to anybody. We have had miners who have used codeaphone whose identities have been revealed. We have had complaints called in that have not been acted upon in a timely manner. I am not telling you something that I have not talked to the agency about personally, because I have.

I am not saying that they haven't tried to do things to improve because they have also done things to try to improve it as well. But I am saying the system that we have today is broken and it doesn't work, and this just seems like a good fix for all miners to be able to have an access to where they would have the confidence of somebody they could go to to help fix those problems.

Mr. PAYNE. Thank you very much.

Also, Dr. Weeks, you mentioned the two main areas that you would like to see proposed, and wished to speak to these: first, the revision of the dust standard from 2.0 to 1.0 for a 10-hour shift; and the personal dust monitor. I just have a question regarding the level of dust.

Is there any way—one of you, Mr. Wright or anyone that would like to answer it—is there any way that the dust levels can be reduced in the mines? Or is it just, you know, you are in the mines; you deal with dust, and there is no way to get around it. I mean, is there circulation or the possibility of that?

Mr. WEEKS. Yes. Dust can definitely be reduced. The methods for controlling dust in underground coal mines are very well-developed. It involves a combination of how you cut the coal, ventilation, work practices and use of water sprays. The dust control in metal/nonmetal mines is a different creature because the whole process is different. Individual processes can be controlled, for example drills and crushing machines and so on that Mike Wright would be better able to speak to.

But it is the existence of these controls in coal mining that makes it possible to do better in terms of reducing dust exposure and preventing black lung. We need to make certain that they do get reduced.

Mike, do you want to speak to that?

Mr. WRIGHT. Yes. Actually, the basics in an underground metal/nonmetal mine are not a lot different. It is basically ventilation and using water sprays on the drills. In the old days, they used to be jackleg drills which an individual miner would operate. These days, they tend to be jumbo drills which is basically a piece of mobile equipment.

Mines also include just a wide net, so mines also include surface operations. We get pretty dusty conditions, for example, in some of the iron mines, the taconite mines and the surface operations where you are basically crushing the rock matrix. Unless you have good ventilation systems, unless you have wet-working in those systems, then those operations can be fairly dusty as well.

But the control is pretty well-understood, and a lot of operators do it fairly well. Some don't. The problem with voluntary measures is that not everybody volunteers.

Mr. WEEKS. If I could add something to that, I just recently completed a review of dust exposure in metal/nonmetal mines. The exposure to silica in surface and underground mines is essentially the same. You get very high levels of exposure.

One of the things that is missing on surface mines is that there is no X-ray surveillance program at all for miners in the metal and nonmetal sector. My concern is that we may have a large number of cases of silicosis among surface miners that we simply don't know anything about. They show up in a variety of ways.

The whole program for preventing black lung in the coal mining industry does not exist for miners in the metal/nonmetal industry, and it should, in my opinion.

Mr. PAYNE. [Off-mike] getting ready to do it. They found everything that industry wants there. I just wonder if at a place in Africa where there is a lot of [off-mike], is there any international organization that attempts to—if we have these problems here in the United States, I don't know what they are going to have in Mongolia.

I mean, is there any national or international group that might be trying to promote, even from our administration, anyone to try to educate miners in other countries?

Mr. WEEKS. Yes, there are two groups that come to mind immediately. One is the International Labor Organization which sets standards for chest X-ray films for conducting surveillance for pneumoconiosis that would apply both to black lung and to silicosis. They are actively involved in disseminating information to basically everybody that they can get to.

There is another group, the International Standards Organization, that has set standards for defining what respirable dust is. That is a very fine point and a technicality, but it actually turns out to be important. One of the things that the NIOSH criteria document does in recommending the lower exposure limit is adopt the ISO definition of what a respirable dust is.

And there are a number of other international organizations that are active in this area as well.

Mr. WRIGHT. There is also a group called the International Federation of Chemical Energy, Mine and General Workers. That is an international labor body. It basically represents unions in those trades around the world, including mining unions. We actually have a fairly active program of working with that organization and working with miners in several different countries.

I visited mines in Russia and in Poland, and members of my staff have visited mines in Kazakhstan, Sweden, Germany and a couple of other places. We have both been able to teach some of the techniques we use in the U.S. and we have been able to learn as well from really all those countries. So that kind of exchange is going on.

Mr. PAYNE. Thank you very much.

Yes, just to mention that there have been a number of letters in regard to this question about the mine owners not having an opportunity to have their points of view made. We have a copy of four letters from the different ones, the National Mine Association, the Iron Miners Association, the Industrial Minerals Association, the Detroit Salt Company.

So I just want to let the other side know that the mine owners have not been shy, nor have they not known what is going on because they have certainly sent information to the committee on their point of view.

Chairwoman WOOLSEY. Would the gentleman like those included in the record?

Mr. PAYNE. I would appreciate it if they would be included in the record.

Chairwoman WOOLSEY. Without objection.

[The information follows:]

FROM :DETROIT SALT FAX NO. :313 841 0466 Jul. 26 2007 12:25PM P2

DETROIT SALT·COMPANY

July 26, 2007

The Honorable Lynn Woolsey
US House of Representatives
2263 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Woolsey,

Please oppose the S-MINER Acts (H.R. 2768) and (H.R. 2769). Michigan will lose jobs if this legislation passes.

The Detroit Salt Company owns and operates the Historic Detroit Salt Mine, the only active underground mine in the State of Michigan. For over 100 years, this mine has provided salt products to various communities in the State of Michigan and other Northern States. The Detroit Salt Mine has consistently operated as a safe facility for mining rock salt. Furthermore, we have been honored by MSHA with the prestigious Sentinel of Safety Award given to the safest mining operations in the nation 5 of the last 7 years.

The proposed legislation (H.R. 2768) and (H.R. 2769) would unfairly create a cost burden on our industry, material vendors, subcontractors, and would ultimately impact local communities by increasing their costs to provide winter ice control for roads. Due to budget constraints companies such as ours could be forced to reduce their workforce to meet their budgets. **Michigan cannot afford to lose any jobs at this time.**

The proposed legislation extends massive coal industry regulatory mandates, penalties, and costs to the suppliers of other aggregates, minerals and metals critical to construction, consumer, national defense, agriculture, environmental safety and health products; even though they have no relationship to the coal issues that motivated the legislation.

We are just beginning to see the cost increases levied on us by last year's MINER Act, which also were unrelated to safety in our industry. The de-icing salt industry is internationally competitive, adding further unwarranted, massive new regulatory costs to our products will threaten our nation's capacity to provide critical materials and move more high paying US jobs off shore.

Thus, I respectfully ask that you oppose H.R. 2768 and 2769. I also respectfully request that that you contact the Members of the House Education and Labor Committee and urge them to oppose these bills that will be the subject of a hearing on July 26th.

Sincerely,

Emanuel Z. Manos
Vice President of Operations
The Detroit Salt Company

DETROIT SALT COMPANY LLC • 12841 SANDERS STREET • DETROIT, MI 48217 • 313-841-5144 • FAX 313-841-0456

July 25, 2007

The Honorable George Miller, Chairman
Committee on Education and Labor
United States House of Representatives

The Honorable Lynn Woolsey, Chairperson
Subcommittee on Workforce Protections
Committee on Education and Labor
United States House of Representatives

Dear Chairman Miller and Chairperson Woolsey:

Attached please find our comments to the Supplemental Mine Improvement and New Emergency Response Act of 2007 (H.R. 2768) and the Mine Health Enhancement Act of 2007 (H.R. 2769).

We represent a 9-member state coalition comprised of eastern mining states that collectively account for approximately 42% or (490,414,000) tons of the nation's coal production output, 80% or 62,000 of the nation's miners and approximately 90% or (550) of the nation's 600 underground coal mines.

As your aware, the Mine Improvement and New Emergency Response Act of 2006, or the "MINER Act," was signed by President Bush just over one year ago. This comprehensive safety legislation amends the Federal Mine Safety and Health Act of 1977 and was strongly supported by industry and labor. It was also a bipartisan bill, jointly endorsed by both Republicans and Democrats in the United States Senate and House of Representatives.

Coal management, workers, legislators, government leaders, academicians and researchers came together to develop workable solutions to achieve our shared goal of improving coal mine safety.

However, the same cannot be said for the current deliberations surrounding H.R. 2768 and H.R. 2769. These legislative proposals were composed unilaterally without any input from the organizations we represent and from mine health and safety professionals from around the industry with responsibility for designing and managing mine safety programs.

Consequently, these two pieces of legislation are fraught with technological impracticalities, unachievable expectations; unrealistic timelines and are the product of unilateral, partisan rule making. They are premature in nature and have little, if anything, to do with the accidents occurring last year.

In their current form they will only serve to frustrate full implementation of MINER Act 1 and add little to improve the industry's mine safety performance record.

During similar hearings over the past eighteen months we pledged our support to work with you, state and federal governments and all interested parties to improve mine safety. The industry has kept that commitment and has dedicated endless resources and countless man hours to the many processes and forums underway designed to improve coal mine safety.

We reaffirm our pledge and commitment today as we move to implement all measures enacted last year and strive to develop a greater level of worker protections and improved mine safety.

For these reasons we encourage this Subcommittee to postpone further consideration of H.R. 2768 and H.R. 2769.

If you have any questions or need additional information please let me know by calling 304/342-4153.

Sincerely,

Chris Hamilton
Senior Vice President
West Virginia Coal Association

On behalf of the Eastern Coal States:

Alabama Coal Association; Coal Operators and Associates; **Kentucky** Coal Association; **Illinois** Coal Association; **Indiana** Coal Council; **Maryland** Coal Association; **Ohio** Coal Association; **Pennsylvania** Coal Association; **Virginia** Coal Association; Virginia Mining Association; **West Virginia** Coal Association; and, Western Kentucky Coal Association

Comments on Behalf of the

Eastern Coal States

Alabama Coal Association; Coal Operators and Associates; Kentucky Coal Association; Illinois Coal Association; Indiana Coal Council; Maryland Coal Association; Ohio Coal Association; Pennsylvania Coal Association; Virginia Coal Association; Virginia Mining Association; West Virginia Coal Association; and, Western Kentucky Coal Association

Before the House Education and Labor Committee's Subcommittee on Workforce Protections of the United States House of Representatives

Hearing on the Supplemental Mine Improvement and New Emergency Response Act of 2007 (H.R. 2768) and the Mine Health Enhancement Act of 2007 (H.R. 2769)

July 26, 2007

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to participate in today's hearing and for your ongoing attention to the important topic of "Coal Mine Safety".

We are pleased to report on the progress made throughout the nation's underground coal mines over the past eighteen months and to comment on the legislation before your Committee.

We represent a 9-member state coalition comprised of eastern mining states that collectively account for approximately 42% or (490,414,000) tons of the nation's coal production output, 80% or 62,000 of the nation's miners and approximately 90% or (550) of the nation's 600 underground coal mines.

As a primary comment, we would question the desirability and necessity of moving forward with H.R. 2768 & H.R. 2769 as full implementation of MINER Act 1 has not been realized. Furthermore, we submit for your consideration that given the significant workplace changes and introduction of new safety technologies resulting from MINER Act 1 and companion health and safety legislation enacted by state governments across the coal states, new legislation at this time would add to the confusion which already exists and place an additional strain on mine safety resources which are currently overtaxed. This cascade of ever changing mine safety law would additionally present untenable technological challenges for our industry and the manufacturers of mine safety equipment. Instead of proceeding with your deliberations of H.R. 2768 and H.R. 2769, which unlike most provisions found in MINER Act 1, do not have relevancy to the highly publicized accidents last year, we would respectfully urge Congress to work with industry and government (both federal and state) to assist in the complete and effective implementation of MINER Act 1.

A few observations which form the basis of my testimony and our primary position articulated above. First, as we previously reported, West Virginia recorded its safest mining year in history during calendar year 2005 which literally ended hours before the tragic Sago accident. Nationally, calendar year "2005" marked the third consecutive year in which a historic low number of mining deaths was recorded.

The overall safety performance of this industry, which was brought into question as the result of tragic accidents last year, was the culmination of many years whereby mine safety experienced gradual but continual improvement.

Technological advancements in mine extractive techniques combined with an extraordinarily skilled and experienced workforce were primarily responsible for this achievement.

Unfortunately, the tragic events last year overshadowed decades of improvement, and, have not accurately portrayed how technologically advanced or how safe mining has become over the past several decades.

Mining deaths year-to-date (2007) are more reflective of the improvement noted in recent years, i.e., 2 mining deaths in West Virginia versus 17 for the same period last year. Nationally, there have been nine deaths recorded compared to 34 in 2006.

But one mining death is one too many, and despite all the progress charted over the years, the events of last year left us with the understanding that much work remained, particularly in the post-accident phase so that the effect of an accident can be minimized or mitigated. Hence, additional improvements have been made in these important areas over the past year.

Since passage of the MINER Act last year, there have also been major mine safety reforms in practically every mining state. These major reforms, coupled with an array of administrative actions and issuance of administrative policies and rules, have resulted in new requirements for needed improvements:

These include:

- Statewide Immediate Accident Notification System;
- Wireless Communication Systems;
- Additional Self Contained Self Rescuers (SCSRs);
- Underground Safety Shelters;
- Revised Mine Emergency Preparedness Plans;
- Individual Tracking Devices;
- Additional Lifelines;
- New Mine Seal Design, Construction & Examination Criteria;
- Mine Seal Remediation Plans;
- Mine Seal Atmospheric Testing Requirements;
- Additional Belt Ventilation Measures
- Mine Foreman Continuing Education Programs; and,
- Miner Training & Retraining Programs

An additional sixty (60) company-supported mine rescue teams are anticipated over the next year. Additional state and federal budget dollars have been appropriated for more mine inspectors and important health and safety research. Moreover, every underground mine has redesigned their mine rescue and general mine preparedness plans. All miners have been trained and retrained in mine emergency simulations and procedures, and in the use of SCSRs.

Increased investigation and the development of preventive measures continue on both the state and federal administrative levels in forums comprised of mine health and safety professionals.

It is clear -- the lessons learned from Sago, Alma and Darby have already been transformed into enhancements for the underground coal mining industry and its overall mine safety program.

Additional enhancements are imminent as ongoing investigative and accident analysis continue.

It should also be noted as we progressed throughout calendar year 2006 looking for ways to improve mine health and safety and to prevent recurrences of the accidents which claimed human life, we witnessed an unprecedented level of cooperation from all involved parties and stakeholders from around the industry.

Coal management, workers, legislators, government leaders, academicians and researchers came together to develop workable solutions to achieve our shared goal of improving coal mine safety so that every miner returns home safely every day to his family and home.

These collective efforts have culminated in significant reforms of various state and federal mine safety acts and in the passage of landmark "bi-partisan" federal mine safety legislation.

We feel it is important to note that this same level of cooperation among all stakeholders is continuing on most state fronts today as additional improvements are sought. However, the same cannot be said for the current deliberations surrounding H.R. 2768 and H.R. 2769. These legislative proposals were composed unilaterally without any input from the organizations we represent and from the mine health and safety professionals from around the industry with responsibility for designing and managing mine safety programs.

Consequently, these two pieces of legislation are fraught with technological impracticalities, unachievable expectations; unrealistic timelines and are the product of unilateral, partisan rule making. They are also premature in nature and have little, if anything, to do with the accidents occurring last year. In their current form they will only serve to frustrate full implementation of MINER Act 1 and add little to improve the industry's mine safety performance record.

It is also obvious that H.R. 2768 was fashioned after West Virginia's law that mandated emergency shelters and enhanced communication systems sooner than companion requirements found under MINER Act 1.

Under West Virginia law, plans for emergency shelters were submitted in April and plans for emergency communications and miner tracking devices are due this month. However, don't confuse "submitting a plan" with having these technologies in place. For the record, there are no safety shelters in West Virginia coal mine today and only a couple of mines have enhanced communications systems and no mine has a communication system in place that will likely meet compliance with MINER Act 1.

The first shelter is scheduled to be delivered by late fall and only a few mines are prepared to install a mine wide communication system capable of withstanding an underground explosion, even with new redundancy and hardened features.

Many technological challenges remain and manufacturing capabilities to equip all West Virginia coal mines with safety shelters and communication systems required by H.R. 2768 simply does not exist.

Roughly one third or 225 of the nation's underground mines are located in West Virginia. Although more effective, through-the-earth communication systems are still in the design stage, West Virginia elected to move forward with existing technologies and components designed to provide enhanced communications during an emergency event. These technologies, which are also found in H.R. 2768 as interim systems, are not readily available nor can they be installed in the time frames presented with any degree of reliability or effectiveness. These are highly complex computerized systems that are configured on highly sophisticated and technical components.

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

Moreover, compliance targets are currently hindered in West Virginia due to a lack of available resources and expert knowledge to meet industry wide compliance. You cannot just throw these complex systems in an underground mine and expect them to work! An inordinate amount of time and endless hours of dedicated expert resource is required for proper design, installation and operation of these systems.

Delivery problems currently exist for SCSRs required by MINER Act 1. Although greater numbers of SCSRs have been deployed over the past year throughout our nation's mines, total compliance, principally due to present demand and manufacturer capability, has not been met. Consequently, mining operations have received citations and closure orders. H.R. 2768 establishes similar unrealistic demands for mine communications, individual tracking systems and emergency shelters.

With all the new safety requirements currently being implemented it is imperative, perhaps now more than ever before, that greater cooperation with state agencies and safety leadership be demonstrated by MSHA. Many of the new state requirements have a federal counterpart or companion rule and we are presently confronted with two separate enforcement expectations and compliance schedules with several of the new provisions.

It is for these reasons that we urge all regulatory agencies to come to a common conclusion and implement a course that will protect miners without causing undo burden to mine operators through redundant differential compliance.

Despite these regulatory conflicts and technological challenges, the industry has moved forward with implementation plans to bolster its safety efforts at an estimated investment of nearly a quarter of a billion dollars for calendar years 2006-07. Most of this cost has been incurred by the eastern states whom I speak for today. Although these new safety technologies pass the cost-benefit analysis, state and federal governments could minimize stranded investments and duplicative costs by simply working closer together.

During similar hearings over the past eighteen months we pledged our support to work with you and with state and federal governments along with all interested parties to improve mine safety. The industry has kept that commitment and has dedicated endless resources and countless man hours to the many processes and forums underway designed to improve coal mine safety. We have opened up our mining operations and have assisted the vendor and research communities in the design, installation and testing of mine communications and individual miner tracking systems and other mine safety technologies.

We reaffirm our pledge and commitment today as we move to implement all measures enacted last year and strive to develop a greater level of worker protections towards improved mine safety.

The "Sago", "Darby" and "Alma" accidents will continue to serve as a reminder that our path forward and quest to become the safest mining industry in the world should never cease. I am pleased to report today that much work has been completed and the basis for additional safeguards and worker protections has been laid.

With all the changes brought about from the tragic accidents last year, the nation's coal mines will clearly remain the safest place in the world to mine coal. As we continue to maintain that superiority safety standing and confidence in our industry, it is imperative that Congress work with the industry.

For these reasons we encourage this Subcommittee to postpone further consideration of H.R. 2768 and H.R. 2769 indefinitely and work with the nation's leading energy producing industry.

Ample time should be afforded for proper consideration of the various proposals contained in any future safety legislation. All affected parties should also be included in relevant deliberations. Mistakes were made when the MINER Act I was hastily passed such as State mine rescue teams are not being viewed as valid mine rescue teams. This action may have an unintended consequence of eliminating some of the best mine rescue teams in the nation. For example, Kentucky is seriously considering abandoning its mine rescue teams which served as the backbone of mine rescue efforts in Kentucky. Why? Because the strict definition of a "mine rescue team" under MINER Act I does not recognize a state mine rescue team, making them ineligible to function and be recognized by MSHA as legitimate."

A more detailed analysis of the specific provisions of H.R. 2768 and H.R. 2769 follow. Also attached herewith is a white paper and powerpoint presentation providing an overview of the nine-eastern state coalition authoring these comments. If you have any questions or need additional information, please let us know.

A Critique of

The Supplemental Mine Improvement and New Emergency Response Act of 2007 (S-MINER Act) (H.R. 2768)

Significant progress has been made in implementing the MINER Act.

The Mine Improvement and New Emergency Response Act of 2006, or the "MINER Act," was signed by President Bush just over one year ago. This comprehensive safety legislation amends the Federal Mine Safety and Health Act of 1977 and was strongly supported by industry and labor. It was also a bipartisan bill, jointly endorsed by both Republicans and Democrats in the United States Senate and House of Representatives.

More than $250M has been invested by National Mining Association (NMA) underground coal mine operators, alone, on safety improvements related to this sweeping new statute since its passage.

More importantly, significant progress has been made in several critical areas in which the MINER Act mandates substantial new requirements designed to improve miners' ability to survive and escape from a mine fire or explosion or survive if trapped underground. These critical areas include, but are not limited to:

- Placing more than 86,000 new additional self-contained self-rescuer (SCSR) units into service for the purpose of assisting miners to escape from a mine and safely storing these additional SCSRs at specified locations in the escapeways of underground coal mines from the deepest work area to the surface at distances no further than an average miner could walk in 30 minutes;

- Implementing improved classroom SCSR training so that miners will become intimately familiar with the complete donning of all types of SCSRs used at the mine;

- Conducting "expectations training" in which each miner must don and transfer SCSRs in smoke, simulated smoke, or an equivalent environment and breathe through a realistic SCSR training unit that provides the sensation of normal SCSR airflow resistance and heat;

- Implementing realistic quarterly emergency response drills in which, among other requirements, miners actually travel the primary and alternate escapeways and practice proper use of the SCSR by controlling breathing and physical exertion;

- Providing emergency supplies of breathable air for miners trapped underground sufficient to maintain such miners for a sustained period of time;

- Installing redundant post-accident communications systems, such as secondary telephone or equivalent two-way systems, between the surface and underground personnel,;

- Implementing new post-accident personnel tracking systems to determine the current or immediately pre-accident location of underground personnel; and

- Installing flame-resistant directional lifelines to facilitate the escape of miners during a mine-wide emergency.

The addition of new regulatory requirements will create confusion and threaten continued progress on implementing the safety improvements required by the MINER Act.

Industry, labor and governmental agencies are moving expeditiously to implement the safety improvements required by the MINER Act. To date, all statutory timelines have been met. This has occurred despite inconsistencies that have arisen between federal and state requirements in a number of key areas, e.g., refuge chambers/breathable air, wireless communications.

The MINER Act is purposefully "technology-forcing," requiring the introduction of significant technological innovations in underground coal mines. In particular, it requires the introduction of new (and in some cases unproven and/or commercially unavailable) technology related to wireless two-way communications and electronic tracking of miners trapped underground. Effective deployment of these technologies will not occur until its safe application can be assured.

Many underground coal mine operators have already purchased new portable state-approved refuge chambers. These purchases were undertaken to either meet state regulatory requirements in West Virginia and Illinois or to address the breathable air requirement for trapped miners in the MINER Act. The National Institute for Occupational Safety and Health (NIOSH) is now in the process of testing the safety and efficacy of these state-approved refuge chambers. At the same time, as mandated by the MINER Act, NIOSH is on track to deliver by the end of 2007 its report on the utility, practicality, survivability, and cost of various refuge alternatives in underground coal mines, including commercially available portable refuge chambers.

In addition, the Mine Safety and Health Administration (MSHA), NIOSH, and the industry have spent considerable time testing various types of innovative communications and tracking technology to determine what will safely work in an underground environment. Implementation of these innovations will require that a significant capital investment be made by the industry. It is critical that the new communications and tracking technologies installed in these underground mines work and contribute to improved safety.

The S-MINER Act would create new requirements in these already difficult and challenging technology-forcing areas. For example, the S-MINER Act would create earlier deadlines by requiring that hardened "leaky feeder" electronic communications and tracking systems be installed in all underground coal mines within 120 days from the date of enactment. These premature changes threaten the real progress being made. If implemented, these new requirements may lead to the installation of less than effective technology. They also have the potential to strand significant dollars already invested by companies in safety improvements.

The S-MINER Act circumvents notice and comment rulemaking, in key respects, thereby preventing the development of sound safety and health standards and policies.

Notice and comment rulemaking is a precept fundamental to the MINER Act and its predecessor statutes. The basic purpose of such rulemaking is to afford stakeholders the due process required by law by providing a reasoned forum that allows all interested parties to comment on proposed regulations. The process is designed to help governmental agencies such

as MSHA collect the best available information so that the final regulations implemented are effective and fair. The process also provides an opportunity for interested parties to comment on what does and does not work, that is, what is practicable or capable of being done. The process also creates a baseline of procedural justice and governmental accountability.

The S-MINER Act, and its related Miner Health Enhancement Act of 2007 (H.R. 2769), would circumvent this crucial rulemaking process in key areas. The Miner Health Enhancement Act of 2007 would require MSHA, with no opportunity for public input, to automatically adopt the recommended exposure limits developed by NIOSH as legally enforceable Permissible Exposure Limits (PEL). The bill also contains a Hazard Communications provision that would require MSHA to automatically adopt standards established by private and quasi-governmental organizations. There would be no opportunity for interested parties to comment on these issues. Both the requirement mandating the use of NIOSH recommendations as enforceable PELs and the Hazard Communication provision requiring automatic adoption of quasi-governmental and private standards would apply to all mines, both surface and underground and coal and metal/nonmetal operations.

On the date of its enactment, the S-MINER Act would also mandate by statute the use of a Personal Dust Monitor ("PDM") to be furnished by operators of underground coal mines for each miner, despite the fact that the PDM is not commercially available. Furthermore, the S-MINER Act would mandate a lowering of the respirable dust standard for underground coal mines with no opportunity for industry or other stakeholder input. The exclusion of key constituents from this process will result in regulatory requirements that are ineffective and unworkable.

The S-MINER Act changes the roles and responsibilities of MSHA and NIOSH in a number of key respects. It also introduces organizations unfamiliar with the mining industry into the safety process.

The S-MINER Act would radically change a number of key MSHA and NIOSH responsibilities. In our opinion, this will create regulatory confusion. With one key exception, the authority for establishing mandatory safety and health standards is vested, under the Federal Mine Safety and Health Act of 1977, in the Secretary of Labor through MSHA. That standard-setting authority is continued in the MINER Act. The role of NIOSH in standard-setting, on the other hand, is advisory in nature. The S-MINER Act would require Health and Human Services (HHS)/NIOSH to establish the frequency of dust sampling, rather than MSHA.

The S-MINER Act would turn this well-understood and effective standard-setting regime on its head by mandating that MSHA simply accept NIOSH recommendations. The S-MINER Act would also require MSHA to adopt

tracking systems, refuge chambers, and belt standards designed/certified by NIOSH. This would circumvent the current approval and certification process. It would also undermine established protocols to ensure that products used in mines are safe.

The S-MINER Act also contains a provision requiring MSHA to contract with the Chemical Safety and Hazard Investigation Board to conduct "special investigations" of mine accidents. An investigation of this type would be triggered by a request by a "miner's representative" or the families of individuals involved in the accident. While the Board is knowledgeable and respected, it is unfamiliar with mining. We question whether the Board would have the technical knowledge capable of analyzing the complex hazards that are unique to this Industry.

The S-MINER Act will result in an administrative nightmare for MSHA and the industry.

The S-MINER Act contains several provisions that are impractical. For example, it requires operators of all mines, both underground and surface, coal and metal/nonmetal, to notify the agency when every violation is abated. This would create an unnecessary burden for mine operators, especially since inspectors are at the mine virtually every day. An effective system to abate violations is already in place. Additionally, it would require all operators to notify MSHA of a number of incidents that are not likely to cause injury or are otherwise life-threatening. Notifying the agency of near miss incidents or other events that are not clearly defined by the S-MINER Act, will lead to confusion, i.e., "any other emergency or incident that needs to be examined to determine if mines are safe..." It will also waste valuable time and resources by requiring operators to notify MSHA, and the Agency, in turn, to respond to numerous irrelevant events.

In addition, the S-MINER Act contains a requirement for the establishment of an advisory committee to study the question of whether the federal government should federally license mining operations or various mine personnel. This provision would cover all mines, both surface and underground, coal and metal/nonmetal. These questions, however, are already well covered by existing state processes. Duplicative federal requirements would lead to the creation of an additional bureaucracy, cost taxpayers significant dollars and have negligible impact on improving mine safety.

The S-MINER Act would also require MSHA to randomly select five percent of the SCSR units at all underground coal mines every six months and remove them for testing. This provision is ill-conceived. It would unnecessarily tie up MSHA resources. It will also remove SCSR units from service that are needed by working coal miners. MSHA recently

introduced new quality control procedures to inventory and monitor SCSR units. These new procedures make this requirement unnecessary.

Many provisions of the S-MINER Act will be susceptible to potential abuse and manipulation.

When a serious accident or mine disaster occurs, it is critical that a comprehensive and unbiased investigation take place to prevent a recurrence. Other motives, such as politics, labor-management issues, or potential future civil litigation should take a back seat to determining the factors contributing to an incident for purposes of future prevention.

The S-MINER Act would permit a "miner's representative" or a representative of the injured party's family to request a public hearing and/or a special investigation. Processes of this type tend to go beyond an objective investigation of the facts. They create the opportunity for grandstanding by parties whose interests go beyond mine health and safety.

The S-MINER Act also contains a provision related to the use of a Personal Dust Monitor ("PDM") that causes concern. This provision would empower a miner to change his/her work activities "whenever necessary" if the PDM indicated an elevated respirable dust level. While we support this concept, some restrictions should be put in place to prevent individuals from intentionally creating an elevated dust reading in order to avoid a work assignment.

The S-MINER Act outlaws the use of belt air to ventilate the face at underground mines. As a result, it would severely diminish safety by prohibiting the use of a proven procedure critical to safely operating a number of underground mines.

It is well established that using belt air to ventilate underground mines is a safe procedure. The term "belt air" means air coursed over a coal-carrying conveyor belt for purposes of ventilating the working areas of the mine. Belt air is critical to the development of underground coal mines in areas of significant overburden. In such deep mines it is important to reduce the number of entries. Leaving more coal in place to support the overburden reduces the potential for roof falls and face/rib outbursts. Reducing the number of entries necessitates the use of belt air to ventilate these mines. To do otherwise would diminish safety by increasing the likelihood of roof falls, face/rib bursts and similar types of ground control events.

The use of belt air is also critical to mines that have excess levels of methane and other dangerous gases. The use of the additional (belt) entry for intake air facilitates the delivery of more air to reduce gas and respirable dust levels.

Current MSHA regulations require mines using belt air to: 1) install automatic monitoring systems ("AMS") to monitor for heat, smoke and carbon monoxide; 2) maintain lower respirable dust levels; and 3) adopt a number of other safety precautions. These additional precautions contribute to improved safety conditions at these operations.

The MINER Act required MSHA to establish a Technical Study Panel to evaluate the use of belt air and belt flammability standards. The panel is in the final stages of their evaluation, and is on track to deliver its report to the Secretary of Labor by the end of the year, well within the date mandated by the MINER Act. Additional requirements related to the use of belt air should not be issued until the Panel's report and recommendations are finalized.

The additional penalty provisions included in the S-MINER Act are draconian, unnecessary and unfair.

The S-MINER Act would increase penalties, establish new requirements for "pattern of violations," and restrict the ability of mine operators to contest inappropriate enforcement actions. These stricter enforcement provisions, which would apply to all mines, both surface and underground, coal and noncoal, are unnecessary. They would not contribute to improved health and safety.

Contrary to the picture painted by the S-MINER Act, injury trends continue to improve. For example, within the coal industry the Total Reportable Incident rate over the past 10 years has improved by 45 percent (7.90 to 4.37). In addition, significantly fewer fatal injuries have occurred YTD in 2007.

MSHA published new civil penalty regulations, covering all mines, on March 22, 2007. These new regulations addressed the statutory requirements of the MINER Act related to civil penalties. They also revised the agency's formula for calculating assessments related to violations. MSHA estimates that the cost increase of these new penalty regulations will range from 127 percent to 228 percent. Most conservative estimates from mine operators are projecting penalty cost increases of 200 percent to 300 percent. MSHA's new penalty regulations should be given a chance to work before any additional statutory changes are made.

The S-MINER Act would make it more difficult for mine operators to challenge inappropriate enforcement actions. It would require them to escrow the assessments related to a contested violation pending resolution of the dispute. This requirement is clearly designed to discourage mining companies from contesting enforcement actions. It would also limit the ability of mine operators to defend themselves against unfair treatment and inappropriate violations.

The S-MINER Act takes a one-size fits all approach that fails to recognize that mines are unique. If enacted, it will result in many mines installing inappropriate or unnecessary technology.

The S-MINER Act is prescriptive, as opposed to being risk-based, in design. It would mandate the use of technologies that may not be appropriate for all underground mines. For example, it would require all underground coal mines to install "hardened leaky feeder" (or equivalent) communications systems. Leaky feeder communications systems are a promising technology. NIOSH is researching ways to harden these systems to improve the likelihood of surviving an explosion. At this point, the NIOSH research is not complete. Effective means of hardening leaky feeder systems have not yet been identified.

Mine operators should not be required to introduce technology that is neither proven to be safe nor yet commercially available. In addition, operators should have the flexibility to introduce other types of communications infrastructure, such as fiber optics, if these systems are better suited for their mines.

The S-MINER Act would also require underground coal mines to adopt administrative procedures to evacuate miners, without loss of pay, if a lightning storm approached the mine. This type of approach fails to recognize that all underground coal mines do not have the same risk factors. Mines with low cover and newly sealed areas present hazards different from those that do not share these same characteristics. Furthermore, as written, the provision would compel underground coal mine operators to withdraw their miners from the mine (often through miles of travelways) any time a storm approaches. Such a provision is neither workable nor necessary.

July 26, 2007

The Honorable Lynn Woolsey
Chairwoman, House Subcommittee on Workforce Protections
House Education and Labor Committee
United States House of Representatives
Washington, D.C. 20515

RE: Miner Health Enhancement Act of 2007 (H.R. 2769) and
Supplemental Mine Improvement and New Emergency Response Act
of 2007 (H.R. 2768)

Dear Madam Chairwoman:

The Miner Health Enhancement Act of 2007 (H.R. 2769) and the Supplemental Mine Improvement and New Emergency Response Act (S-MINER) of 2007 (H.R. 2768) raise serious concerns for the mines and vendors that serve the iron ore mines in Northeast Minnesota. The mines and the hundreds of companies that sell their products and services to the mines are strongly committed to safety and health of their workers. The iron ore that is mined, processed into taconite pellets and delivered to steel mills in the United States is an essential raw material for manufacturers—and the jobs, products and taxes they provide. That same iron ore is critical to our nation's security. Actions that might someday interrupt the flow of the resource need to be well thought out.

The Mine Improvement and New Emergency Response (MINER) Act was passed a year ago and progress is being made to improve mine safety and the procedures by which mines and the Mine Safety and Health Administration (MSHA) are to operate.

That legislation was well conceived as to the affects of the forthcoming rules and reach of the agency's authority. It also makes distinctions between mining operations and ore being mined. Making changes to that significant legislation prior to implementation of the rules developed by experts will weaken the overall process of developing sound mine safety regulations. Legislation correcting minor errors in the original legislation is welcome. However, wholesale changes to the legislation should not occur until the mines and regulatory agencies have a chance to proactively implement the rules based on the 2006 MINER Act. It has been shown that the best way to assure safety is to create "buy-in" from all those involved. Allowing the process to continue will assure that all stakeholders have input and buy-in.

324 West Superior Street Suite 502 Duluth, Minnesota 55802 www.ironminers.org Phone (218) 722-7714 Fax (218) 726-0707

PCA
Portland Cement Association

July 27, 2007

The Honorable George Miller
U.S. House of Representatives
Chairman
House Education and Labor Committee
2181 Rayburn House Office Building
Washington DC 20515

Dear Chairman Miller:

We write regarding the *Miner Health Enhancement Act of 2007* and the *Supplemental Mine Improvement and New Emergency Response Act of 2007 (S-MINER)* to bring to your attention our concerns about this legislation. The Portland Cement Association is a trade association representing cement companies in the United States. PCA's U.S. membership consists of 45 companies operating 106 plants in 35 states and distribution centers in all 50 states servicing nearly every Congressional district. PCA members account for more than 95 percent of cement-making capacity in the United States. Cement is a strategic commodity and essential component of our nation's infrastructure.

The cement industry is committed to making our product with the highest commitment to safety. Although only in its first year of implementation, the *Mine Improvement and New Emergency Response (MINER) Act* passed by Congress last year has already contributed to significant success in improving safety. Our concern is the *S-MINER* bills are premature because they come before the industry's full implementation of the *MINER Act* and therefore could ultimately undermine the important progress which has been gained.

Since the *MINER Act* was signed into law, the Mine Safety and Health Administration (MSHA) has taken aggressive action to implement its provisions. The mining industries have invested more than $250 million complying with the Act's mandates. Due to recent MSHA policies, enforcement and resulting citations are increasing on industries which have already established an impressive record of improving incident and fatality rates. To enact further legislation is premature and likely to cause confusion for the industry and for regulators, increasing the risk of inconsistent inspection and enforcement and threatening continued progress.

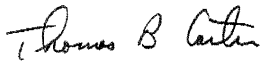
The one-size-fits-all approach of this legislation will not necessarily improve safety. However, it is likely to adversely affect the competitiveness of industries like cement that contribute to the security, economic growth, and prosperity of our country.

500 New Jersey Avenue, N.W., 7th Floor
Washington, DC 20001
202.408.9494 Fax 202.408.0877

www.cement.org

Thank you for your consideration of our concerns on this important issue. Please do not hesitate to contact me should you have any questions regarding PCA's perspectives on this matter.

Sincerely,



Thomas B. Carter
Staff Vice-President
Environment, Health & Safety

cc: Members of the House Education and Labor Committee

July 26, 2007

The Honorable George Miller
U.S. House of Representatives
Chairman
House Education and Labor Committee
2181 Rayburn House Office Building
Washington DC 20515

The Honorable Howard McKeon
U.S. House of Representatives
Ranking Member
House Education and Labor Committee
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairman Miller, Ranking Member McKeon and Members of the Committee:

The National Lime Association ("NLA") requests the opportunity to submit the following statement for the record of this hearing on "The S-MINER Act (H.R. 2768) and the Miner Health Enhancement Act of 2007 (H.R. 2769).

NLA is the trade association for manufacturers of calcium oxide and calcium hydroxide, collectively referred to as "lime." NLA's members operate both surface and underground mines under the jurisdiction of the Mine Safety and Health Administration ("MSHA"). NLA and its members are firmly committed to miner safety, with an active Health and Safety Committee, a recognition program, and continuing education for mine safety professionals.

NLA's general comment on the new legislation is that it is too soon after the enactment and implementation of the Mine Improvement and New Emergency Response (MINER) Act to determine what additional mine safety provisions are needed. NLA believes that some of the provisions of H.R. 2768 and H.R. 2769 are appropriate, some are unnecessary, and others are counterproductive to miner safety, but the potential impact of the provisions is very difficult to predict while the implementation of the MINER Act is still underway.

The MINER Act imposed significant new requirements on all mines (as well as specific requirements directed to coal mines). These included new penalties and new notification requirements. MSHA has responded by substantially strengthening its penalty policies and procedures, even beyond what is required by the MINER Act. MSHA has also stepped up its enforcement activities. NLA believes that Congress should allow the MINER Act to be fully implemented, and MSHA's new regulations and procedures to demonstrate their impacts, before new legislation is passed.

While NLA believes that further mine safety legislation should be postponed for the reasons explained above, the following specific comments address certain aspects of the two bills:

Adoption of NIOSH RELs as PELs

NLA strongly opposes the provision in H.R. 2769 that would require MSHA to adopt the NIOSH Recommended Exposure Limits ("RELs") as Permissible Exposure Limits ("PELs"), without the

opportunity for notice and comment rulemaking. While NLA recognizes that MSHA has been slow to update the PELs, the NIOSH RELs were not designed to be enforceable limits, and were not developed through open rulemaking.

NLA has particular experience with rulemaking with regard to RELs and PELs. In 1988, the Occupational Safety and Health Administration ("OSHA") proposed to reduce the PEL for calcium oxide (quicklime) from 5 mg/m^3 to 2 mg/m^3, which was the ACGIH threshold limit value (TLV) at the time—it is also the NIOSH REL. NLA submitted comments to OSHA and conducted a study showing that the proposed PEL lacked an adequate scientific basis. In response to these comments, OSHA decided that it should not reduce the PEL, and retained the 5 mg/m^3 level. 54 Fed. Reg. 2623 (Jan. 19, 1989). Enactment of H.R. 2769 would require MSHA to impose a PEL of 2 mg/m^3 for calcium oxide, and would preclude the agency from considering the same kind of scientific evidence that persuaded OSHA to take a contrary course.

NLA strongly believes that Congress should refrain from directly setting workplace limits in such a wholesale manner, but should rather instruct MSHA to apply resources to new PEL rulemaking.

Enforcement, Penalties, and Pattern of Violations

The S-MINER Act includes a number of provisions intended to strengthen MSHA's enforcement powers, such as higher penalties, a new pattern of violations program, and enhanced enforcement powers. As noted above, MSHA has already toughened both its penalty rules and its enforcement activities, in part in compliance with the MINER Act, but going well beyond the requirements of that Act. NLA believes that the impact of those provisions should be evaluated before more changes in enforcement procedures are made.

But NLA also believes that a broader point should be emphasized: while strong enforcement is important, it is only part of an overall policy that improves miner safety. It is also crucial for MSHA to have a strong educational and compliance assistance program. The great majority of mine owners are strongly committed to safety, and are willing to do what it takes to provide a safe workplace. For these mines, enhanced enforcement will not improve safety, but can rather be counterproductive by creating an adversarial relationship with inspectors, and pushing facilities to focus on compliance rather than effective safety programs. This risk is exacerbated by the structure of the Mine Act's inspection requirements, which mandate that all underground mines receive four complete inspections each year, and all surface mines receive two, with no regard for the safety record of the mine.

NLA believes that Congress should take a broader look at mine safety, and should consider how to encourage and enable good behavior, as well as to deter bad behavior. This could include enhanced education resources for MSHA, incentive programs, and more flexible inspection requirements. Legislation should be developed in consultation with labor, industry, and regulators in order to ensure a broad discussion and understanding of all the factors that go into enhanced safety for mine workers. NLA would be pleased to assist in such a process.

Dust Standards

It is NLA's understanding that the respirable dust standards in Section 7 of the S-MINER Act apply only to coal mine dust and coal mines. We request that the language be clarified to avoid potential confusion.

Conclusion

NLA concurs with the statements of other mining industry associations, such the Industrial Minerals Association—North America and the National Stone, Sand and Gravel Association, and we do not repeat those comments in detail. We urge the Committee to consider reserving action on further mine safety legislation until the full impacts of the MINER Act can be understood, and to fully engage industry, labor, and MSHA itself in the development of legislation. We would be happy to provide any further information that would be helpful to you.

Very truly yours,

Hunter L. Prillaman
Director, Government Affairs
National Lime Association
200 N. Glebe Road
Arlington, VA 22203
703-908-0748
hprillaman@lime.org

Industrial Minerals Association — North America

July 26, 2007

The Honorable George Miller
U.S. House of Representatives
Chairman
House Education and Labor Committee
2181 Rayburn House Office Building
Washington DC 20515

The Honorable Howard McKeon
U.S. House of Representatives
Ranking Member
House Education and Labor Committee
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairman Miller, Ranking Member McKeon and Members of the Committee:

On behalf of the Industrial Minerals Association – North America (IMA-NA), and its over 100 member companies, we are pleased to submit the following statement concerning the two legislative initiatives affecting the mining industry that currently are pending before the House Education and Labor Committee: the *Supplemental Mine Improvement and New Emergency Response Act of 2007* (S-MINER) (H.R. 2768) and the *Miner Health Enhancement Act of 2007* (H.R. 2769). These measures, while containing many proposals worthy of discussion, are broad-reaching in their application and should not be enacted in a hasty manner before full input from all sectors of the mining community can be considered.

The Industrial Minerals Association - North America is a trade association organized to advance the interests of North American companies that mine or process industrial minerals. As you may know, these minerals are used as feedstocks for the manufacturing and agricultural industries and are used to produce such essential products as glass, ceramics, paper, plastics, paints and coatings, detergents and fertilizers. The IMA-NA membership includes leading producers of ball clay, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, mica, perlite, soda ash (trona), talc, wollastonite, and other industrial minerals. IMA-NA's membership also includes many of the suppliers to the industrial minerals industry, including equipment manufacturers, railroads and trucking companies, and consultants.

As our association only involves metal/nonmetal mines (both surface and underground), our initial comments consequently will focus on the portions of the bills affecting the entire mining community, rather than those addressing underground coal operations and technology.

At the outset, it is important to recognize that the metal/nonmetal mining sector has made significant strides in mine safety since the initial enactment of the *Federal Mine Safety and Health Act of 1977* (1977 Act or Mine Act). As the following table and graph indicate (using Mine Safety and Health Administration (MSHA) data), the overall injury rate at these mines has continued to decline, even while production and employment in this sector has increased.

Metal and Nonmetal Mine Safety and Health

Metal and nonmetal mining includes production of metals such as gold and copper, nonmetals such as the minerals highlighted above, and production of stone, sand and gravel. Mining techniques and conditions are diverse and differ substantially from the coal sector. Most metal

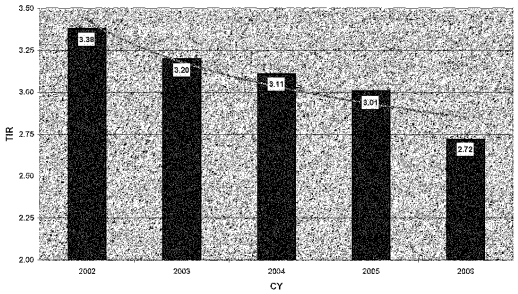
2011 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20006 | 202-457-0200 | fax 202-457-0287 | www.ima-na.org

and nonmetal operations are small. MSHA has focused on small mines and formed partnerships to aid in accident reduction.

	1995	2000	2001	2002	2003	2004	2005	2006	2007 (Q1)
Number of M/NM mines	10,913	12,289	12,479	12,455	12,419	12,467	12,603	12,772	10,659
Number of miners	229,536	240,450	232,770	218,148	215,325	220,274	228,401	240,522	225,746
Fatalities	53	47	30	42	26	27	35	25	5
Fatal injury rate	.0250	.0218	.0146	.0220	.0138	.0137	.0170	.0117	.0099
All Injury rate	5.24	4.45	4.10	3.86	3.65	3.55	3.54	3.19	3.25
States with M/NM mining	50	50	50	50	50	50	50	50	50

In 2006, there were 25 metal/nonmetal fatalities – 10 fewer than the previous year. This represents the lowest number of fatalities on record in a calendar year. IMA-NA realizes that even one fatality is one too many, and we pledge our support in working with both Congress and MSHA to strive for attainment of zero fatalities. Declining incidence rates are one path to this objective and the industrial minerals industry has achieved steadily improving performance on this measure, as reflected in the graph below.

Industrial Minerals - Total Incidence Rate (TIR)
CY 2002 - 2006



Achieving the zero fatality goal requires more than simply punitive measures against mine operators; training and initiatives that encourage proactive adoption of best practices that go beyond mere regulatory compliance also are essential parts of the solution.

IMA-NA supported the *Mine Improvement and New Emergency Response Act* (MINER Act), the legislation enacted by a bipartisan Congress last year. That legislation enjoyed broad support by industry, labor interests, and government. It is too soon to evaluate the impact of that major overhaul of the 1977 Act, especially since implementation of the new penalty provisions by MSHA (the main parts of the MINER Act affecting IMA-NA member company operations) did not take effect until April 23, 2007. In addition, some key sections affecting the coal sector have not

yet been integrated fully into operations due to technological constraints and the lag-time associated with the rulemaking process.

It is clear, based upon news releases by MSHA, that the agency is aggressively pursuing the heightened penalties against flagrant violators, is strictly enforcing the new 15-minute notification rule for serious accidents, and is employing its long-standing Pattern of Violation powers under Section 104(e) of the 1977 Act (as codified at 30 CFR Part 104) more ardently than in the past. The agency has, of course, also increased penalties across the board and the first operators now have received civil penalty assessments under the new Part 100 criteria, many of which far exceed the projected increases forecast by MSHA during the rulemaking. In short, it would be premature to call the MINER Act a success or failure at this time, much less to determine that additional enforcement-related measures or new rules are warranted.

This is why, as the Committee embarks upon its initial hearings on the new legislation, we urge its members not to legislate at haste and repent at leisure. Adding another layer of requirements as set forth in these bills may be counter-productive to safety and health as more resources could be directed toward litigation instead of being invested in development of stronger, more comprehensive safety and health programs.

At this time, we will focus on only a few of the provisions that IMA-NA believes have the greatest potential for unintended adverse consequences or that are legally flawed. We wish to stress that there may be merit in some of the underlying concepts and we would welcome the opportunity to engage in further dialogue with the Committee and its staff to determine how to achieve the desired result in a manner that will enhance safe and healthy mining operations while also preserving the rights of all concerned.

Miner Health Enhancement Act of 2007

IMA-NA fully agrees that the existing health standards now enforced by MSHA are outdated and are in need of revision. For the metal/nonmetal sector, MSHA had incorporated by reference the 1973 version of the American Conference of Governmental Industrial Hygienists' (ACGIH) Threshold Limit Values – a version that is difficult for most mine operators to even obtain because it is so old. IMA-NA also agrees that it would be appropriate to update these permissible exposure limits (PELs) in an expedited manner, and IMA-NA long has been supportive of the work performed by the National Institute for Occupational Safety and Health (NIOSH) to conduct research on mine safety and health and to inform the MSHA rulemaking process.

However, IMA-NA cannot support Section 3 of this legislation, as written, because it would render the Administrative Procedure Act a nullity for the mining industry, depriving its members of their due process rights to be part of the rulemaking process through notice-and-comment standards development as set forth at 5 USC § 551 et seq. There simply is no basis for disenfranchising individuals, labor interests, and companies regulated by MSHA through lesser rights to participate in the standard-setting process than their brethren who are under Occupational Safety and Health Administration (OSHA) authority (or, for that matter, under rules propounded by the Environmental Protection Agency or other administrative bodies).

At this time, IMA-NA is not taking a position on which NIOSH Recommended Exposure Limits (RELs) are "right" and which are inappropriate. We do point out, however, that when NIOSH developed individual RELs, it did so without the intention that they would become binding regulations, and so feasibility and substantial risk analysis were not part of the development process. These were established, for the most part, without public comment, or with limited

review by the public of "criteria documents." Moreover, some of these RELs also may be outdated at this point.

The approach suggested in this legislation, which would require MSHA to adopt current RELs as enforceable PELs without engaging in rulemaking, and to automatically incorporate any future RELs developed by NIOSH, effectively turns NIOSH into a regulatory agency. This was not the intent of Congress when NIOSH was created in the Occupational Safety and Health Act of 1970, or when Congress extended NIOSH's research mandate to mining in 1977, and the agency is not designed for such responsibilities. Mandating adoption of RELs could have the unintended effect of slowing down or halting altogether the REL development process because MSHA would have, in effect, delegated its rulemaking authority to this branch of the U.S. Department of Health and Human Services.

A better approach might be to consider a negotiated rulemaking to update PELs for coal and metal/nonmetal mines on an expedited basis, giving all affected parties a seat at the table, and soliciting input from NIOSH on this issue as well. This would preserve due process rights, ensure that appropriate limits are codified, and maintain the original research/advisory function of NIOSH to keep it distinct from the regulatory/enforcement arena.

With respect to the updating of MSHA's asbestos standard, as set forth in Section 4 of the Miner Health Enhancement Act, IMA-NA has supported fully adoption of the OSHA PEL by MSHA during the rulemaking that has been underway at MSHA for the past several years. It is our understanding that the rule is nearing completion and given the wealth of information already provided to the agency in the administrative rulemaking record, we do not believe that abandoning that rulemaking process makes sense at this late hour. It appears that MSHA already intends to largely adopt the OSHA standard, perhaps with some improvements that will help accurately sample for true asbestos in mixed-dust environments containing mineral particulates (that are distinct from asbestos) and improving the analytical procedures used for samples obtained in the mining environment.

Finally, with regard to hazard communication (addressed in Section 5 of the proposed legislation), IMA-NA believes that it would be more productive to encourage MSHA to commence revision of its HazCom standard (30 CFR Part 47) in the same manner that OSHA is now doing, in order to correspond with the forthcoming Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The GHS is slated for worldwide utilization in early 2008 and OSHA already has completed the Advance Notice of Proposed Rulemaking phase of standard development, while MSHA has not yet placed this initiative on its regulatory agenda. It is critical for all sectors of American commerce to be able to market their products on a global basis, and mining should not be left behind. IMA-NA is concerned that if Congress redirects MSHA's focus toward adopting the current OSHA standard, in effect the mining industry will be adopting something that already is outdated. We would suggest that this Committee examine the provisions on this subject (which covered both OSHA and MSHA) contained in the Enzi/Kennedy legislation considered during the previous Congress. This is a more effective way of making meaningful improvement in the hazard communication system for both agencies.

S-MINER Act

As noted above, we will refrain at this time from commenting on the coal-specific provisions of the legislation. To the extent that the legislation encourages study of the applicability of these provisions to underground metal/nonmetal operations (Section 4(j)), IMA-NA again believes it is premature to impose additional requirements when the seeds of the MINER Act still are coming

to fruition. Because most nonmetal underground mines are not gassy mines, and many are naturally ventilated, the applicability of some of these provisions is questionable. However, IMA-NA is supportive of efforts to develop technology that would help enhance the efforts of mine rescue teams and tracking technology that benefits and protects miners in all sectors of the industry equally.

With respect to Section 5, supplemental enforcement authority, while many of these concepts look good on paper, more thought and discussion is needed to determine the real-world impact of these mandates. For example, some of the "powers" proposed are already possessed by MSHA under the 1977 Act (e.g., Section 103 of the current law prohibits impeding investigations and inspections and it does not appear that enhancement of those powers is warranted given that MSHA already can get injunctive authority from the U.S. District Court, where needed). Similarly, MSHA already has power under Section 103(k) of the 1977 Act to issue orders that shut down all or part of a mine following an accident. In many cases, MSHA already uses this power to suspend mine operations for weeks or months while it completes its investigative activities. Therefore, the provisions in Section 5(a) of the proposed legislation are quite redundant with existing powers.

IMA-NA commends Congress for addressing the loss of experienced mine inspectors, as this is also a concern to industry. The incentives included in Section 5(b) are worthy of consideration by the Department of Labor and we hope that these could be implemented fairly quickly before MSHA loses half of its current workforce (as projected will occur in the next two-to-five years).

As noted earlier in these comments, MSHA has begun utilizing its Pattern of Violations powers more aggressively in recent years, and just has issued clarifying policy to alert mine operators and miners on how patterns will be determined with more precision. IMA-NA does not believe that adding a new penalty component is necessary at this point, given the impact that a Pattern finding will already have on mine operations, and in light of MSHA's new "repeat violation" penalty criterion in 30 CFR Part 100 (which was added by the agency in an effort to go beyond the dictates of Congress in the MINER Act to heighten penalties for all classes of violations that indicate a pattern or practice of certain types of safety or health deficiencies). IMA-NA maintains that the current Pattern powers, coupled with the revised civil penalties and flagrant violation provisions, will be sufficient to get the attention of any scofflaw mine operators. Congress should provide MSHA with sufficient time to utilize these revised powers before modifying this program again.

The provision in Section 5(e) dealing with notification of abatement is not likely to advance safety, but only to generate additional paperwork. Each citation and order already specifies an abatement deadline and MSHA inspectors generally are quick to revisit the mine to determine whether abatement has occurred. MSHA already is empowered to impose a $6,500 per day penalty for failure to abate, and to issue orders under Section 104(b) of the Mine Act that triggers withdrawal of miners from all or part of a mine under such circumstances. There is no need for further requirements, in our view.

Section 5(f), concerning failure to timely pay assessments, should be considered more carefully. IMA-NA opposes the idea of forcing operators to "post bond" in the full amount of any proposed penalties before having the right to contest citations. This could jeopardize the livelihood of small operations by tying up their operating capital during the long litigation process, even when ultimately they are vindicated. MSHA already can get court orders to force payment or posting of bonds. It may be overkill to permit closure of an entire mine over non-payment of a $112 penalty. In the past, many times penalty notices were not received by mine operators in a timely manner or errors were made by MSHA's assessment office (e.g., failing to close out penalties

on citations that were vacated as part of settlements). In such cases, often mine operators still receive "overdue" notices that take time to reconcile with the agency's computer system. It would be unduly harsh to have such mines' operations closed down while attempting to correct errors that were not of their making.

As IMA-NA already has observed, MSHA just increased its minimum and maximum civil penalties from a minimum of $60/maximum of $60,000 to a minimum of $112/maximum of $220,000, effective April 23, 2007. It is premature to direct additional penalty increases before determining the effect that the latest rulemaking will have on safety and health. Civil penalties always were intended to have a deterrent effect, rather than to be punitive. The minimum penalties proposed are inappropriate given the non-critical nature of many citations (e.g., uncovered trash cans) and the subjective nature of MSHA's standards and enforcement classifications. Section 5(g) should be eliminated from this legislation. IMA-NA also disagrees with elimination of criteria that consider the impact of penalties on a company's ability to remain in business, as set forth in Section 5(h). IMA-NA also believes that mandatory minimum penalties of $10,000 for alleged interference with inspections or for violation of whistleblower rights (and maximum penalties of $100,000) (set forth in Section 5(i)), may not be appropriate given the small size of some mining companies. A case-by-case analysis is more appropriate in such circumstances, and the trier of fact should have the ability to determine an appropriate penalty using the existing Part 100 criteria.

IMA-NA has concerns about the provisions in Section 5(k)(1) that would hold a mine operator financially responsible for penalties incurred by an independent contractor who might perform work at its site, in the event that the contractor was unable to pay the penalties or went out of business. This is inappropriate given that the mine operator may not have an ongoing relationship with such contractors (e.g., a roofing contractor who performs repair work on a building, or an electrical contractor making spot repairs) and will have no way to determine a contractor's "financial health' when engaging them for a one-time project of short duration. Moreover, given that the mine operator already can be cited for a contractor's violations under the recent *Twentymile Coal* decision, this provision could result in a mine operator being fined twice for the same infraction that was solely the fault of a distinct company and with which the mine operator has a legitimate independent contractor, as opposed to an employment, relationship. This provision should be eliminated.

It appears that Section 5(k)(2), regarding subpoena powers, would bring MSHA's authority in line with that of OSHA. To that extent, IMA-NA would not object to this provision but cautions against the routine use of subpoenas to engage in "fishing expeditions" prior to the issuance of citations/orders in an enforcement action. IMA-NA does not object to the clarifying provisions contained in Section 5(k)(3) and (4) of the proposed legislation with respect to S&S violations and issuance of citations within a "reasonable time."

However, IMA-NA has serious concerns about the provisions in Section 5(k)(4) that would bar attorneys who represent mine operators from also representing individual miners in related actions. There is no basis for interfering with a miner's right to have counsel of his/her own choosing, particularly given that MSHA enforcement actions can carry criminal sanctions. The right to counsel is a fundamental precept in our system of jurisprudence and a miner should have no lesser rights than his/her counterpart in construction or general industry. If a company and one or more of its employees makes an informed decision to mount a united defense and to share counsel, after waiver of any potential conflicts, they should be permitted to do so and this is quite routine in business. It is wholly inappropriate for Congress to consider interference with this inherent constitutional right.

IMA-NA is interested in further exploring with Congress the concept of federal licensing, as advanced in Section 5(l) of this legislation. Many states already provide for licensing of certain categories of miners, foremen and those engaged in special activities (e.g., blasters and electricians). If a federal license might enhance portability of skills and have recognition across the United States, this could be beneficial. The goal should be to encourage employment and professional development in the mining industry, rather than to limit the opportunities for those who are interested in employment.

IMA-NA approves of clarifying that certain categories of "accidents" could be reported within one hour, rather than within 15 minutes, as proposed in Section 6(d). In IMA-NA members' experience to date, the15-minute rule already is proving somewhat infeasible – especially for underground operations with limited personnel available who can render assistance while also being able to communicate with MSHA. IMA-NA urges Congress to consider revisiting this issue while the subject is up for consideration, to provide greater latitude on a case-by-case basis.

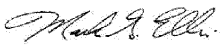
With respect to Section 7, respirable dust standards, it is our understanding that this section was intended to be limited to respirable coal mine dust and applied solely to coal mines, rather than covering the entire mining industry. Clarifying language is needed to ensure that this provision does not have unintended enforcement consequences.

Conclusion

The safety and health of miners is, and will continue to be, the highest priority of the industrial minerals industry. We recognize the industry's duty – both legal and moral – to provide a safe and healthy workplace for all miners. Although only in its first year of implementation, the Mine Improvement and New Emergency Response (MINER) Act passed by Congress last year already has contributed to significant success in improving safety. We hope that this Committee will provide MSHA with adequate time to implement the MINER Act fully before replacing those priorities with new initiatives, and before it can fully determine the economic consequences of the new penalty structure on the many small businesses that make up the American mining industry.

Thank you for your consideration of our perspective.

Sincerely,



Mark G. Ellis
President

cc: Members of the House Education and Labor Committee

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United Mine Workers of America

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July 26, 2007

The Honorable George Miller, Chairman
Committee on Education and Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Congressman Miller:

The United Mine Workers of America (UMWA) is very pleased to see the introduction of two new and expansive miner health and safety bills in the U.S. House of Representatives, HR. 2768, known as the S-MINER Act and HR. 2769 the Miner Health Enhancement Act of 2007. The recent passage of the 2006 MINER Act following the tragedies at Sago, Aracoma, and Darby last year was widely recognized as a great first step. However, it was only a first step. Much more action is needed in order to ensure that continued improvements are in place for the health and safety of the nation's miners. Enacment of the two recently introduced bills would go a long way towards continuing the job that began with the passage of the MINER Act.

On behalf of the Nation's miners, I would like to commend and thank you, as well as other members of the U.S. House of Representatives that have continued to work towards making our mines safer places to work. The UMWA is strongly supportive of the long, over due improvements that will be made in the nation's coal fields that the passage of these bills would effect.

The UMWA is eternally grateful for your actions on behalf of all miners.

Sincerely,

Cecil E. Roberts

Cecil E. Roberts

cc: Daniel J. Kane, International Secretary-Treasurer
Lynn Woolsey, Sub-Committee Chair, Committee on Education and Labor

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Chairwoman WOOLSEY. Now, for the closing remarks of Ranking Member Wilson.

Mr. WILSON. Thank you, Madam Chairman.

Indeed I appreciate, as the co-chair of the Mongolia Caucus, I unfortunately was not able to accompany Congressman Payne, but I know he did a great job in Ulan Bator. Also, I want to note that you gave very good information on HADA to promote health and safety as they develop their industry. I am very pleased that it is a joint South Carolina-California corporation, Fluor Corporation, which will be also providing expertise.

Indeed, as we have discussed the issues today, I want to thank the chairwoman for indicating that we may get back together some-

time to consider the issues in a committee meeting. I am always happy to be with this group. I would like to point out that particularly the offer to Mr. Stricklin, where you indicated in a very positive way, I thought, to go over the 16 provisions that he has concern about, that it might be very helpful to have a further hearing.

Additionally, indeed I think it is very helpful to have someone here from the United Mine Workers. They were here at the prior hearing, and now they are here at this hearing after the bills have been introduced. But indeed, we have not heard from the Mining Association since the bills have been introduced.

And I am going to be moving to include by unanimous consent certain statements and letters for the record, but I would point out that it is just so much more helpful when we can, as has been done today, very constructively ask questions. I think we have all learned in a very positive manner on different issues, but it is so much better that indeed we can ask questions and not just read some of the tomes that might be presented to us.

So at this time, I would like to move unanimous consent for the statements from the National Mining Association, the International Minerals Association of North America, which may have already been included in the motion by Congressman Payne, and letters from the International Minerals Association of North America, the National Lime Association, the National Stone, Sand and Gravel Association, the Portland Cement Association, and the Salt Institute.

Chairwoman WOOLSEY. Without objection.

[The information follows:]

Prepared Statement of the National Mining Association

The National Mining Association (NMA) appreciates the opportunity to share our views on legislation that has been introduced to amend our nation's mine safety laws and the measure that was unanimously adopted by the Senate and overwhelming adopted by the House last year, the Mine Improvement and New Emergency Response Act of 2006 (MINER Act).

NMA, as you know, worked toward the passage of the MINER Act and we continue to believe that its core requirements are sound. The MINER Act, which was endorsed by labor and industry prior to its passage little more than one year ago, has already contributed to significant success in improving safety. But much remains to be accomplished by both the Mine Safety and Health Administration (MSHA) and the industry to achieve full implementation.

Since the MINER Act was signed into law on June 15, 2006, MSHA has taken aggressive action to implement its provisions. Industry has invested more than $250 million thus far complying with the act's mandates. Most importantly, mining operations are on track to return to year-over-year improvements in mining safety. (See below for a list of MINER Act accomplishments to date.)

We believe that diverting attention and resources away from the critical task of fulfilling the mandates of the MINER Act because of the necessity to respond to an additional layer of statutory requirements could ultimately undermine the progress that has been made on miner training and other vital objectives of the act. To impose further legislation before the full impact of the original MINER Act can be comprehensively measured is premature. Consequently we urge that Congress defer consideration of these measures until all parties'—labor, industry, regulators and members of Congress—can fairly and independently analyze the MINER Act's impact.

NMA also notes a similar caution shared by prominent mine engineering academics in their July 25, 2007 letter to the chairman and the ranking member of the House Committee on Education and Labor. The 11 academics from leading schools of mine engineering warned against "dramatically disrupting the very core of the industry" with additional provisions at this time.

Accompanying our statement is a critique of a number of provisions of the new legislation that we believe are unnecessary and possibly even counterproductive to our shared mission of improving mining safety. This statement highlights what we believe are some of the major flaws of the bills introduced as well as what is missing from the discussion.

I. The addition of new regulatory requirements will create confusion and threaten continued progress on implementing the safety improvements required by the MINER Act.

The S-MINER Act would create new requirements in these already difficult and challenging technology-forcing areas. For example, the bill would shorten deadlines by requiring that hardened "leaky feeder" electronic communications and tracking systems be installed in all underground coal mines within 120 days from the date of enactment. These premature changes threaten the real progress being made. If implemented, these new requirements may lead to the installation of ineffective technology. They also have the potential to strand significant dollars already invested by companies in safety improvements.

II. The S-MINER Act circumvents notice and comment rulemaking, thereby preventing the development of sound safety and health standards and policies.

Notice and comment rulemaking is a precept fundamental to the MINER Act and its predecessor statutes. The basic purpose of such rulemaking is to afford stakeholders the due process required by law by providing a reasoned forum that allows all interested parties to comment on proposed regulations. The process is designed to help governmental agencies such as MSHA collect the best available information so that the final regulations implemented are effective and fair. The S-MINER Act, and its related Miner Health Enhancement Act of 2007 (H.R. 2769), would circumvent this crucial rulemaking process in key areas.

III. The S-MINER Act changes the roles and responsibilities of MSHA and NIOSH in a number of key respects. It also introduces into the safety process organizations unfamiliar with the mining industry.

The S-MINER Act would radically change a number of key MSHA and NIOSH responsibilities. In our opinion, this will create regulatory confusion.

The bill would turn this well-understood and effective standard-setting regime on its head by mandating that MSHA simply accept NIOSH recommendations. This would circumvent the current approval and certification process and would also undermine established protocols to ensure that products used in mines are safe.

The bill also contains a provision requiring MSHA to contract with the Chemical Safety and Hazard Investigation Board to conduct "special investigations" of mine accidents. While the Board is knowledgeable and respected, it is unfamiliar with mining. We question whether the Board would have the technical knowledge capable of analyzing the complex hazards that are unique to this Industry.

IV. The S-MINER Act will result in an administrative nightmare for MSHA and the industry.

The S-MINER Act contains several provisions that are impractical. For example, it requires operators of all mines, both underground and surface, coal and metal/nonmetal, to notify the agency when every violation is abated. This would create an unnecessary burden for mine operators, especially since inspectors are at the mine virtually every day. An effective system to abate violations is already in place. Additionally, it would require all operators to notify MSHA of a number of incidents that are not likely to cause injury or are otherwise not life-threatening. Notifying the agency of near miss incidents or other events that are not clearly defined by the bill will lead to confusion, i.e., "any other emergency or incident that needs to be examined to determine if mines are safe * * *"

The bill would also require MSHA to randomly select and remove for testing five percent of the SCSR units at all underground coal mines every six months. This provision is ill-conceived. By removing from service SCSR units that are needed by working coal miners, it will exacerbate the existing shortage. Recognizing that the inspection system used in the past was flawed, MSHA recently introduced new quality control procedures to inventory and monitor SCSR units. These new procedures address the flaws and make these legislative requirements unnecessary.

V. The S-MINER Act outlaws the use of belt air to ventilate the face at underground mines. As a result, it would severely diminish safety by prohibiting the use of a procedure critical to the safe operation of a number of underground mines.

Belt air is critical to the development of underground coal mines in areas of significant overburden. In such deep mines, reducing the number of entries is an important precaution against the likelihood of dangerous roof falls and similar types of ground control events. This precaution, however, places a premium on the use of belt air for ventilating deep mines. It is also critical to ensure that a sufficient amount of air is available to dilute gas and dust.

The MINER Act required MSHA to establish a Technical Study Panel to evaluate the use of belt air and belt flammability standards. The panel is in the final stages of its evaluation, and is on track to deliver its report to the Secretary of Labor by the end of the year, well within the date mandated by the MINER Act. The congressionally mandated panel should be permitted to complete its work and additional requirements related to the use of belt air should not be issued until the panel's report and recommendations are finalized.

VI. The additional penalty provisions included in the S-MINER Act are draconian, unnecessary and unfair.

The S-MINER Act would increase penalties, establish new requirements for "pattern of violations," and restrict the ability of mine operators to contest inappropriate enforcement actions. These stricter enforcement provisions, which would apply to all mines, are unnecessary and will not contribute to improved health and safety.

Contrary to the picture painted by the S-MINER Act, injury trends continue to improve. For example, within the coal industry the Total Reportable Incident rate over the past 10 years has improved by 45 percent (7.90 to 4.37).

VII. The S-MINER Act's one-size-fits-all approach fails to recognize that mines are unique. If enacted, this bill will result in many mines installing inappropriate or unnecessary technology.

The S-MINER Act is prescriptive, as opposed to being risk-based, in design. It would mandate the use of technologies that may not be appropriate for all underground mines. Mine operators should not be required to introduce technology that is neither proven to be safe nor yet commercially available.

The independent Technology and Training Commission, whose work is referenced in the summary documents that accompanied introduction of S-MINER Act, identified "systematic and comprehensive risk management as the foundation from which all life-safety efforts emanate." The prescriptive nature of the bill ignores this independent recommendation and would confine MSHA and the industry to continuation of a one-size-fits-all approach.

VIII. The Missing Pieces.

Just as the S-MINER Act is burdened by the addition of premature requirements, it is weakened by the absence of provisions that could make significant contributions to mine safety.

Substance Abuse Testing

Neither the supplemental MINER Act nor the Miner Health Enhancement Act deal with the problem of substance abuse in our nation's mines. This glaring omission must be addressed if we are truly concerned about improving safety. While some companies, depending upon the jurisdiction within which they operate, can implement random drug and alcohol testing, this cannot be applied universally. Unfortunately, the absence of mandatory, random drug and alcohol testing creates an unacceptably permissive environment in which impaired individuals are free to endanger co-workers at facilities where random testing is prohibited by jurisdictional or company policy. This practice cannot be permitted to continue.

All miners deserve to know that they are working in an environment where they need not concern themselves with safety consequences arising from another employee being impaired due to substance abuse. Last year we promoted, during consideration of the MINER Act, inclusion of language providing authority for mandatory, random drug testing throughout the industry. Unfortunately, this sensible precaution was opposed by some in the Senate and was not included in the bill that came before the House.

Recognition of this problem is long-overdue and we ask that if a bill emerges from this Committee it include authority for operators to institute mandatory, random drug and alcohol testing programs to safeguard their employees.

Mandatory Health Surveillance

Section 7 of the S-MINER Act addresses what some believe is necessary to bring about further reductions in the percentage of coal miners developing coal workers pneumoconiosis (CWP) or black lung disease. We, like you, support efforts to eradicate CWP but believe the objective of the bill's authors will never be achieved so long as the x-ray surveillance program under Section 203(a) of the act remains voluntary.

Recently, the National Institute of Occupational Safety and Health (NIOSH) reported on cases characterized as "rapid progression" CWP. The results of the NIOSH study are of concern to all of us and while we need to better understand the scientific basis for these determinations, one fact is glaringly obvious—participation in a mandatory x-ray surveillance program might have prevented progression of the disease in some of these cases.

Since its inception, 30-40 percent of those eligible to participate in the NIOSH surveillance program have voluntarily elected to do so. Just as operators must do a better job ensuring that dust controls are in place and are maintained, so too must we recognize the role of surveillance in an overall prevention strategy.

Eliminating black lung will not occur so long as the x-ray surveillance program remains voluntary. If a bill emerges from this committee it must make participation in the program mandatory.

Inspection Activity & Resource Allocation Decisions

Under the Mine Act, MSHA is required to inspect every underground mine four times per year and every surface mine twice per year. Contrary to congressional expectations, these inspections do not consist of semi-annual or quarterly visits of a few days' duration. Rather, they can, and oftentimes do, mean a continual presence at the mine throughout the year. MSHA's statistics show that a large underground coal mine can have as many as 3,000-4,000 on-site inspection hours a year.

Moreover, in addition the agency also conducts thousands of what it calls "spot" inspections aimed at measuring compliance with standards governing specific conditions or practices.

Under MSHA's regulations mine operators must report immediately all accidents and report on a quarterly basis all lost time injuries and reportable illnesses directly to the agency. This has resulted in the developed of an extraordinary database that ought to be used to guide inspection activity and allocate inspection resources. It is far more likely that inspection activity based on documented need and analysis ill be more effective than inspection decisions based on entirely subjective or ambiguous criteria or on rote compliance with mandates of the Act. MSHA must be authorized to utilize the information available, all of which it compiles and maintains, to identify problem areas and allocate its inspectorate accordingly.

Working together we believe a system can and must be developed that would establish a mechanism to reduce the number and scope of inspections based on performance and the adoption of verified and objectively administered performance goals.

Conclusion

Today mine safety and health professionals face challenges far different from those anticipated when our nation's mine safety laws were first enacted. Difficult geological conditions, faster mining cycles and changes in the way work is conducted introduce potential complications whose solution requires new and innovative responses. Today's challenge is to analyze why accidents are occurring at a mine, then use that analysis as a basis for designing programs or techniques to manage the accident-promoting condition or cause.

Regrettably, the bills before the committee will not accomplish our shared goal. Rather, their intention is to try to force improvement through the imposition of punitive measures that bear little understanding of the complexities of today's mining environment. Eliminating stakeholder participation in the regulatory process will not improve safety, applying one-size-fits all requirements will not improve safety nor will imposing artificial deadlines that ignore the need to develop technology and assure its safe use.

We stand ready to work with the members of the committee to analyze what further statutory amendments are warranted once operators have been afforded the opportunity to fully implement the requirements of the MINER Act. To do otherwise is premature, unnecessary and unwarranted.

MINER Act Accomplishments

The following is a list of industry accomplishments achieved to date under the MINER Act and voluntarily:

- 86,000 new self-contained self-rescuers (SCSR) have been placed into service in the last 12 months and more than 100,000 will be added in the coming months.
- All 55,000 underground coal miners have and will continue to receive quarterly training on the donning and use of SCSRs.
- With the recent approval of expectation training units, all miners will begin to receive annual training with units that imitate the resistance and heat generation of actual models.
- Mines have installed lifelines in both their primary and secondary escape-ways and emergency tethers have been provided to permit escaping miners to link together.
- Underground coal mines have implemented systems to track miners while underground; underground coal mines have also installed redundant communication systems, and new systems to provide post-accident communication continue to be tested.

• All 550 underground coal mines have submitted plans to provide post-accident breathable air to sustain miners that are unable to escape and await rescue.

• Thirty-six new mine rescue teams have been added or are in the planning stages, even before MSHA initiates the rulemaking required by the act.

• These steps and others taken beyond the requirements of the MINER Act have resulted in a safety investment of approximately $250 million for NMA member companies alone.

• Even before the enactment of the MINER Act, NMA and its members engaged the National Institute for Occupational Safety and Health (NIOSH) and Mine Safety and Health Administration (MSHA) in a mine emergency communications partnership.

• NMA members have volunteered their mines for testing tracking and communications systems. Some of these technologies hold great promise; however they are some years away from readiness for mine application.

National Lime Association

LIME

The Versatile Chemical

July 26, 2007

The Honorable George Miller
U.S. House of Representatives
Chairman
House Education and Labor Committee
2181 Rayburn House Office Building
Washington DC 20515

The Honorable Howard McKeon
U.S. House of Representatives
Ranking Member
House Education and Labor Committee
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairman Miller, Ranking Member McKeon and Members of the Committee:

The National Lime Association ("NLA") requests the opportunity to submit the following statement for the record of this hearing on "The S-MINER Act (H.R. 2768) and the Miner Health Enhancement Act of 2007 (H.R. 2769).

NLA is the trade association for manufacturers of calcium oxide and calcium hydroxide, collectively referred to as "lime." NLA's members operate both surface and underground mines under the jurisdiction of the Mine Safety and Health Administration ("MSHA"). NLA and its members are firmly committed to miner safety, with an active Health and Safety Committee, a recognition program, and continuing education for mine safety professionals.

NLA's general comment on the new legislation is that it is too soon after the enactment and implementation of the Mine Improvement and New Emergency Response (MINER) Act to determine what additional mine safety provisions are needed. NLA believes that some of the provisions of H.R. 2768 and H.R. 2769 are appropriate, some are unnecessary, and others are counterproductive to miner safety, but the potential impact of the provisions is very difficult to predict while the implementation of the MINER Act is still underway.

The MINER Act imposed significant new requirements on all mines (as well as specific requirements directed to coal mines). These included new penalties and new notification requirements. MSHA has responded by substantially strengthening its penalty policies and procedures, even beyond what is required by the MINER Act. MSHA has also stepped up its enforcement activities. NLA believes that Congress should allow the MINER Act to be fully implemented, and MSHA's new regulations and procedures to demonstrate their impacts, before new legislation is passed.

While NLA believes that further mine safety legislation should be postponed for the reasons explained above, the following specific comments address certain aspects of the two bills:

Adoption of NIOSH RELs as PELs

NLA strongly opposes the provision in H.R. 2769 that would require MSHA to adopt the NIOSH Recommended Exposure Limits ("RELs") as Permissible Exposure Limits ("PELs"), without the

opportunity for notice and comment rulemaking. While NLA recognizes that MSHA has been slow to update the PELs, the NIOSH RELs were not designed to be enforceable limits, and were not developed through open rulemaking.

NLA has particular experience with rulemaking with regard to RELs and PELs. In 1988, the Occupational Safety and Health Administration ("OSHA") proposed to reduce the PEL for calcium oxide (quicklime) from 5 mg/m^3 to 2 mg/m^3, which was the ACGIH threshold limit value (TLV) at the time—it is also the NIOSH REL. NLA submitted comments to OSHA and conducted a study showing that the proposed PEL lacked an adequate scientific basis. In response to these comments, OSHA decided that it should not reduce the PEL, and retained the 5 mg/m^3 level. 54 Fed. Reg. 2623 (Jan. 19, 1989). Enactment of H.R. 2769 would require MSHA to impose a PEL of 2 mg/m^3 for calcium oxide, and would preclude the agency from considering the same kind of scientific evidence that persuaded OSHA to take a contrary course.

NLA strongly believes that Congress should refrain from directly setting workplace limits in such a wholesale manner, but should rather instruct MSHA to apply resources to new PEL rulemaking.

Enforcement, Penalties, and Pattern of Violations

The S-MINER Act includes a number of provisions intended to strengthen MSHA's enforcement powers, such as higher penalties, a new pattern of violations program, and enhanced enforcement powers. As noted above, MSHA has already toughened both its penalty rules and its enforcement activities, in part in compliance with the MINER Act, but going well beyond the requirements of that Act. NLA believes that the impact of those provisions should be evaluated before more changes in enforcement procedures are made.

But NLA also believes that a broader point should be emphasized: while strong enforcement is important, it is only part of an overall policy that improves miner safety. It is also crucial for MSHA to have a strong educational and compliance assistance program. The great majority of mine owners are strongly committed to safety, and are willing to do what it takes to provide a safe workplace. For these mines, enhanced enforcement will not improve safety, but can rather be counterproductive by creating an adversarial relationship with inspectors, and pushing facilities to focus on compliance rather than effective safety programs. This risk is exacerbated by the structure of the Mine Act's inspection requirements, which mandate that all underground mines receive four complete inspections each year, and all surface mines receive two, with no regard for the safety record of the mine.

NLA believes that Congress should take a broader look at mine safety, and should consider how to encourage and enable good behavior, as well as to deter bad behavior. This could include enhanced education resources for MSHA, incentive programs, and more flexible inspection requirements. Legislation should be developed in consultation with labor, industry, and regulators in order to ensure a broad discussion and understanding of all the factors that go into enhanced safety for mine workers. NLA would be pleased to assist in such a process.

Dust Standards

It is NLA's understanding that the respirable dust standards in Section 7 of the S-MINER Act apply only to coal mine dust and coal mines. We request that the language be clarified to avoid potential confusion.

Conclusion

NLA concurs with the statements of other mining industry associations, such the Industrial Minerals Association—North America and the National Stone, Sand and Gravel Association, and we do not repeat those comments in detail. We urge the Committee to consider reserving action on further mine safety legislation until the full impacts of the MINER Act can be understood, and to fully engage industry, labor, and MSHA itself in the development of legislation. We would be happy to provide any further information that would be helpful to you.

Very truly yours,

Hunter L. Prillaman
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AIMING FOR ONGOING SAFETY IMPROVEMENT

RiSC

30 July 2007

Dr. R. Larry Grayson
Professor & George H. & Anne B. Deike Chair in Mining Engineering
Department of Energy & Mineral Engineering
103-A Hosler Building
University Park, PA 16802-5000

Dear Dr. Grayson:

Per our earlier discussion I'm including the draft article being submitted for publication in the forthcoming safety-focus issue of the Society for Mining, Metallurgy and Exploration's copyrighted *MINING ENGINEERING* magazine. As you may know, in the final layout for publication visuals such as photos and other graphic elements are added and text is adjusted for both magazine 'style' and folio size; so there may be minor variations from what follows.

I undertook this pro bono effort recognizing that the coal mining industry faces its greatest challenges in a regulatory and public sentiment sense since the enactment of the 1969 Federal Coal Mine Health & Safety Act. Certainly, given human nature, there will always be the need for the 'stick' of enforcement of fundamental safety standards by regulatory agencies. However, with over 40 years' experience in a variety of roles in mining it's my firm belief that cooperative and collaborative efforts by all stakeholders will result in attainment of the highest safety standards. Merely 'writing tickets' will no more boost real safety progress than is seen in doing so on the nation's highways. Cultural change, attitudes if you will, must be changed to effect real progress.

It's Arthur Sanda's and my earnest hope that this article generates useful dialogue and action amongst all of MINING ENGINEERING magazine's readers. More importantly it may be a useful discussion piece and catalyst for members of Congress.

Best regards,

Richard W. Phelps
Managing Director
Global Mining RiSC LLC

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COAL—striving for higher safety benchmarks

"All stakeholders must go beyond the basics (of safety); compliance with the law is the minimum," Richard Stickler, Acting U.S. Assistant Secretary of Labor for Mine Safety and Health

"Current, federal mine-fire protection criteria date from 1977, before the advent of modern, large conveyor systems. Many existing suppression systems just meeting those standards may be inadequate, particularly in the crucial first-response containment efforts," Dr. R. Larry Grayson, Chairman, Mine Safety Technology and Training Commission (National Mining Assn. sponsored)

Richard W. Phelps, Managing Director, Global Mining RiSC LLC (GMR), and Arthur P. Sanda, Central Appalachian Representative GMR, retired *Coal Age* associate publisher and editor-in-chief

The year 2006 presented the greatest public-image and regulatory challenge in the history of American coal mining. Perhaps the National Mining Association's post-Sago-disaster Commission best sums up the U.S. coal-industry's challenge in saying: "The commission strongly believes that companies which do not pursue the outlined approaches aimed at fulfilling fundamental safety requirements should not be permitted to operate underground coal mines."

Some context: the government's response to thousands of mining fatalities annually in the early 20th century was Congress' creation of the U.S. Bureau of Mines (USBM) in 1910. In the aftermath of the 78 lives lost in the Mannington (aka Farmington) disaster of 1968, the Federal Coal Mine Health and Safety Act (FCMHSA) emerged.

Today producers are struggling with hastily enacted legislation at both the federal and state levels—some of which is not complementary. For 2007, long hours with no vacation are the norm for many safety professionals—from headquarters to mine site. And the National Mining Association says that its members have already spent over a quarter billion dollars towards compliance with the MINER Act—and that figure obviously doesn't include the large population of non-NMA-member coal mining companies. And it exceeds the Congressional Budget Office's estimate of compliance with the MINER Act.

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Two rhetorical questions:

1. Was nearly a decade of less-focused government R&D support a contributor to the debacles of 2006, i.e. the demise of the U.S. Bureau of Mines (USBM)?
2. Don't current and foreseeable industry challenges underscore the need for a freestanding government entity, like the USBM, that will do more of the work that private-sector technology firms don't have the interest or budgets to address? (NIOSH does very commendable work, but at the end of the day it answers to a hierarchy—the Dept. of Health & Human Services' Centers for Disease Control—much divorced from mining and headed by epidemiologists.)

The stakes are at least as high today as they were during the implementation of the FCMHSA in the early-'70s—when the industry suffered double-digit productivity declines. Moreover the mine population dropped significantly from a pre-FCMHSA level of over 7,000, in part due to their inability to economically comply with the regulations. With both print and electronic media's 'unblinking 24/7 coverage,' mine safety is prominent in the public's eyes—translating to unprecedented political pressure. That legislative attention—at both federal and state levels—has resulted in a plethora of regulations with more to come. And some grandstanders in state and federal legislatures—from as far away as California—have seized the opportunity to pressure the industry and thereby advance their own agendas.

And, while the focus is currently coal, there will be 'trickle down.' The powerhouse Washington, D.C.-based law firm, Patton Boggs LLP, has published articles assessing the likely impact on the aggregates sector—so it's a safe bet that hardrock also will see increased regulatory scrutiny.

What are the stakeholders' views?

REGULATOR

In late June, in his Washington, DC office, Acting U.S. Assistant Secretary of Labor for Mine Safety and Health Richard Stickler met with *Mining Engineering*. He began by saying that he recalled the 'good old days' and the pride within Bethlehem Steel Corp. (mining subsidiary) before the FCMSHA. He added, "After the Act it seemed that many people's attitudes was, 'people are telling us to do what we always tried to do anyway. So if the government's going to tell us what to do we'll do just that.' The pride and initiative (in safety) was lost. But at the end of the day the '69 and '77 acts have resulted in tremendous improvement. There are many things that never would've been done in the industry otherwise."

ME question: Congress has criticized MSHA for its lack of alacrity in promulgating regulations, yet Congress mandates the procedures and is now potentially adding another layer of regulations after 2006's MINER Act.

In contrast to federal and state legislators' inclination to pass new regulations fast, Stickler told *Mining Engineering* that MSHA traditionally has been more deliberative in its actions, since it takes "a tremendous amount of work—especially oversight—in government to promulgate regulations, averaging under two new rules annually over a 15 year period." He said, "When I joined MSHA 16 (rules) were on the agenda—equivalent to an eight year backlog. Last

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December we promulgated a regulation on mine evacuation that went beyond the specific requirements of the MINER Act in requiring multi-gas (methane, oxygen, and carbon monoxide) detectors for all miners working alone or in groups of 10, requiring that escapeways be traveled every quarter, and expectation training—so people know how to use a self-rescuer and to encounter the device's breathing resistance and heat."

Stickler added, "we've been working hard to both implement (provisions of) the MINER Act and to complete the reports on the tragic accidents of last year. Additionally we're doing internal reviews to see how we can do anything different to prevent future recurrences."

Moreover, Stickler commented on how no one would've predicted the direction technology has taken. He observed that, "we've come full circle in technology," from mandating cabs and canopies on equipment due to injuries and fatalities to not requiring same with the advent of remote-control equipment. And injuries and fatalities are showing up because of the lack of cabs and canopies.

ME Question: What about enforcement?

Stickler: "In March we finalized rules that significantly increased civil penalties. If the number and severity of violations were the same (in '07) as in '05, the magnitude of fines would rise from $24 million to $68 million. The hope is that increasing the penalties would boost compliance with mine safety laws. I've consistently said that every safety regulation that we have exists because miners have lost their lives. Yet when you analyze the serious accidents and fatalities that occur, they result from non-compliance with the laws.

ME Question: Will appeals and deferrals of citations/fines continue?

Stickler: "Most operators pay their fines—about 85% of the fines are collected. It's a very small percentage who don't care about safety. They don't care about keeping employees out of dust, etc. We've been successful in requiring such operators to put up escrow funds to assure payment of violations. It's not fair to the industry and those who do pay their fines since it results in more laws, higher fines etc. on those who are responsible operators.

"I recently saw an article from NIOSH where geographic areas with higher incidence of black lung disease include: southern West Virginia, east Kentucky, and western Virginia. If you overlaid your higher accident rates and non-payment of MSHA fines with the black lung 'hot spots,' I think you'd find a good correlation with the cultural problem of operators who only comply when MSHA's onsite.

"I've been traveling the nation meeting with all the metal/non-metal districts' personnel telling them that we must use all the tools available to assure compliance. He added that there are three basics of safety:

- compliance with mine safety laws,
- education, and
- training.

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"To get compliance, tools are used up to the unwarrantable-failures and flagrant-violations level. We've issued 14 of those, assessing a couple at the maximum of $220,000 per violation.

"Inspectors are expected to take the time after writing a violation to tell (the operator) what is required for compliance. And we'll try to find ways to help the operators (in complying) if we can.

"Technology is another area; it's done as much to improve health and safety as anything else. Inspectors—traveling various mines—can act as agents of positive technology transfer in solving a safety or health problem. Our 200 engineers and highly skilled personnel in technical support can be brought in as needed to assist with a particular operation's problem.

"The industry can't afford to be complacent. It needs to look forward and anticipate; it's called risk analysis. Then it can take the necessary preventive actions

"(At the time of the interview—late June—and) on a 12-month running total basis, fatalities for the entire mining industry were the lowest in history. Metal/non-metal, at 14 fatalities year-to-date is about average while last year's 25 fatalities was a record low overshadowed by the 47 deaths in coal.

ME question: What about the demographic challenge for experience and training—particularly for mentoring and being able to recognize dangers that may only appear once in every five or ten years?

Stickler: "Yes, we've seen that, and part of it's technology. In the '50s it was the shift from conventional (hand loading) to mechanized (methods) and then 'continuous' mining, and in the '80s from continuous miners to longwall. Another part was the downturn in the metallurgical coal market.

"In 2006 there were 20,000 more miners working in the industry than in 2005. We have about 340,000 miners nationwide. If you take a conservative attrition rate of say 10% that's some 34,000 miners annually. So with the growth of 20,000 that's a total of over 50,000 new miners (in 2006)....a tremendous challenge for hazard training.

"In the '70s, we didn't get ahead of the curve; companies had training sections for new miners but shut them down. Some companies are back into training. (The situation's) only going to continue; the next five years or so will see increasing attrition (due to retirements). MSHA is having the same experience; I was surprised to see that 50% of MSHA's staff was hired in the last five years. Our attrition has been running 10-15% per year. With additional Congressional funding from June 2006, we've stepped up our hiring. We've hired 211 coal-mine health-and-safety enforcement personnel, with a net gain of 138—which implies a 35% attrition (rate), including promotions etc. And the first year is spent in training—half classroom and half field work.

"We try to encourage the industry to use what we knew in Bethlehem Steel as the 'job safety analysis,' now called job task analysis. We'll assist industry in any way we can in this area. That information is on our website and can be downloaded. We also have personnel that can come out to sites to assist in training.

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ME comment: No matter who sits in your chair it's a lightning rod for various stakeholders in the industry. As a practical mining man it's likely somewhat frustrating.

Stickler: "I've gotten my share of lightning bolts from both sides, but I always try to do what's right for mine safety. No matter what you do there will be some who launch those bolts. In early June I attended the Pittsburgh Coal Mine Institute's meeting in Greensburg where I told the mixed audience of UMWA, operators, state enforcement, and NIOSH attendees that the sky wasn't falling—even with the MINER Act and a (then potential) MINER Act Two. Recalling my career and implementing the FCMHSA, there was a long list of technologies—including some that didn't exist—to be introduced. We didn't have the all solutions (then) but (we) worked through it and (today) we're mining more tonnage with greater safety than ever before.

"I think communication is more important than ever before; that's why I get out to meet with (stakeholders). I just attended a meeting of the Eastern Bituminous Coal Assn. (state associations) where I took a beating on the emergency temporary standard on seals. They asked, "why didn't you let it go through rulemaking, without input…requiring us to comply." My response was that once we knew the problem we had to act; we couldn't wait another year (for studies to be completed). There're hundreds of sealed areas with over 14,000 seals out there with 20-50 psi capability. I think we did a great service to all stakeholders by preventing another Sago or Darby. When we explain our reasons for actions we find that people are more understanding.

"There are a lot of operators and miners out there who work very hard. All stakeholders must go beyond the basics, and compliance with the law is the minimum. Getting employees involved is the next step. It starts with top management, where safety is valued, and works its way down the organization. An environment has to be created where individuals' safety initiatives—be it an idea or shutting down unsafe equipment—are rewarded not penalized. Then people at all levels participate.

"At one mine I visited they give out recognition cards. There are prizes at various levels. If you point out an unsafe condition you get a card. Similarly cards were handed out for pointing out an unsafe behavior—a tougher personal situation (involving peer pressure). And cards were also handed out for safe actions, e.g. blocking equipment before working on it. The safety director said he felt that every employee has 'bought in' (to the program) and was his assistant. Before the program they'd had two fatalities that shook the organization.

ME question: what other MSHA initiatives are active?

Stickler: "In March we joined the National Association of Equipment Manufacturers. Hopefully that will provide opportunities to improve safety, e.g. it'd be nice if surface mining equipment were equipped with seat belts. People keep getting thrown out of cabs and injured because there's no seat belt rule. Similarly, standardization of control levers' position and actuation is a worthwhile goal for manufacturers. And proximity detection is a technology that we've not even scratched the surface of with its potential.

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MAJOR OPERATOR

In mid-July ME sat down with Tony Bumbico, Vice President for Safety, Arch Coal, Inc. (one of the largest coal producers in the United States), in his St. Louis, MO office.
Bumbico also served on the National Mining Association-sponsored (post-Sago disaster) Mine Safety Technology and Training Commission

ME question: What are the key safety accomplishments (including those pending) of the stakeholders:

a. Producers
b. Manufacturers
c. Regulatory agencies

From an operator's standpoint, the most significant accomplishment has been reducing the number of injuries, and a steady decline in fatalities over the past decade. In the last 10 years, the Total Incident Rate, i.e. the number of lost-time incidents and injuries per 100 full-time employees, in the coal industry has improved by 45% (7.9 - 4.37). Arch's safety performance has been even better. In 2005, we recorded a Total IR of 1.8. ETD; half-way through 2007, our rate is 1.99. If you look at the National Mining Assn.'s comparative industry data, mining stacks up extremely well compared to other industries.

While the coal industry certainly has more work to be done, the events of last year overshadowed the industry's accomplishments for the preceding 10 years. Compared to 2006, the industry's safety performance has stabilized. According to MSHA, ETD 8 fatal injuries have occurred in the Coal Industry. Although no injury or fatality ever is acceptable, this puts us back on track with where the industry was before 2006, i.e. moving towards a goal of zero.

ME question: What are the respective stakeholders' (producers, manufacturers, labor unions, regulators) greatest safety challenges for the next decade?

The biggest challenge from our standpoint is to maintain a proactive safety strategy that's focused on injury prevention. The legislative and regulatory on-rush in 2006 and 2007 forced operators and regulators into a reactive approach to safety. The environment dictated that we focus on compliance issues.

The Miner Act is a technology driver, but the greatest danger is that (the ensuing) public's expectations will exceed what can be delivered by technology, e.g. wireless communication—very difficult to establish underground without infrastructure that is vulnerable to explosion or fire.

Congress and the agencies have to understand that the mining industry is a small market that is not extremely attractive to manufacturers (in setting R&D budgets). And the Miner Act compliance 'target' is ever-changing so if and when technology changes it must be adopted. This can be-costly. For a large mine, one new system from Northern Lights could run nearly a million dollars to install. In addition, rushing to adopt one technology can effectively retard newer technologies.

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Arch continues its efforts to focus on prevention. Along those lines, we are implementing a behavior-based safety (BBS) program. We've contracted with a company called Behavioral Science Technology, Inc. (BST) to help us with this process. The general concepts underlying the BBS process include increased employee involvement and focusing on upstream indicators of safety performance, i.e. reducing at risk behaviors as a means of moving our safety performance to the next level.

ME question: Speaking broadly about the industry stakeholders, what are the strengths and weaknesses in a safety context?

I think our greatest strength is also our greatest weakness. It's our people. Both Arch and the industry currently have a workforce that's very experienced, innovative and talented. Despite what's reported in the popular press, the industry has made significant progress improving both safety and productivity. These accomplishments go hand-in-hand and have been realized because of the quality of our human resources.

Given the demographics in the industry, we're going to see a significant number of retirements in the next 5-10 years. It's going to be difficult to limit the effect of this drain on the industry's talent pool. And the regulatory agencies are facing the same challenge. The demographics will provide great opportunities for new men and women entering the industry. Demonization by the media, however, could make it more difficult to recruit.

ME question: What are the complications of compliance with the various states' recent legislation vis-à-vis the Miner Act (and potentially, Miner Act II)?

A. Substance, and
B. Deadlines

A key complication lies in the fact that the federal and state governments (particularly in West Virginia and Illinois) have established conflicting mandates. The federal and state requirements differ in key areas such as communication, tracking, refuge chambers, breathable air requirements, and seals. Many of the deadlines for implementing these changes in West Virginia are already in place, or will be in place soon. This means operators in states like West Virginia will be implementing changes that may or may not satisfy MSHA requirements.

From a technical standpoint, the West Virginia requirements (effective 2007) appear to be more achievable compared to MSHA requirements since the state accepts the need for communications support infrastructure. For example, MSHA currently defines their Phase II communication standards (effective 2009) as requiring no underground infrastructure. This can't be met with existing technology.

We're concerned about shooting for a continuously moving target. This will result in 'stranded investments,' effectively wasted capital, with no guarantee for improvement from a safety standpoint. If MINER Act II is passed, this situation will become increasingly complicated. MINER Act II creates new safety requirements and changes deadlines at a time when the industry is scrambling to comply with MINER Act I. In my opinion, MINER Act II will jeopardize the safety progress made by the industry in the last 1½ years.

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ME question: Is there any hope of federal and state agencies harmonizing regulations?

I'm not optimistic. Certainly 'grandfathering' adoption of (then compliant) technologies would help.

ME question: Will strategic planning-especially in safety matters-come to the fore? (Certainly the industry's traditional/tactical approach has been effective over the years; but is it adequate for the future?)

In our opinion, strategic planning in safety will be increasingly important. It will be important from multiple standpoints, i.e. capital investment, human resource, and a process improvement). Underground coal companies affiliated with the NMA have already spent over $250 million on new MINER Act requirements. This doesn't include the costs of refuge chambers or Phase II Communication and Tracking systems. Coming up with the capital dollars to address these new safety requirements will require effective long-term planning.

From a human resources standpoint, operators will have to engage in effective succession planning to address critical workforce needs. We'll need to plan to replace the people who will be retiring in the near future.

In addition, there will be increased pressure for mining companies to improve their safety performance from both a public perception and a competitive standpoint. Arch has already started work in this area. We're in the fourth year of a Safety Improvement Plan (SIP) process that we've implemented at all of our operations. We're very pleased with the process improvements that have been realized.

ME question: Will adoption of certain technologies be accelerated-both in a direct safety as well as production sense? If so, what technologies?
The MINER Act is technology forcing legislation. There is no doubt that manufacturers will accelerate their efforts to develop a number of new safety-related technologies. In particular, I think you'll see efforts to advance technologies related to UG communication, tracking, mine monitoring, seals, and self-contained self-rescuers. Bringing these technologies to market may not be as quick as some would like, however. One thing we need to remember is that underground coal mining is a relatively small market. Since there's limited demand for the technology in question, the pace of change may be slow unless the federal government invests more money in R&D related to mine health and safety.

ME question: Will companies seek to partner with existing or new vendors in developing needed technologies in:

a. Communications
b. System-wide monitoring c. Proximity detection
d. Ambient air quality, e.g. methane, dust e. Others (what ones?)

Alliance Resource Partners, LP, has already established a partnering relationship with an engineering design firm called Matrix in the communication and tracking area.

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ME question: Do you see producers and/or equipment manufacturers joint venturing to address sectors that have offered insufficient market revenue to attract independently developed solutions?

Possibly, but I can't think of any specific examples.

ME question: How will demographics enter into the safety and compliance equation, e.g. baby boomers' retirements?

It will have a major impact. See answer above to strengths and weaknesses.

ME question: Has the attrition-and 'growth'-within state/federal regulatory bodies affected companies' staffing (drawing from some of the same talent pool)?

Not particularly.

ME question: Is mentoring-particularly with near-entry-level management part of the solution?

It's an effective method for developing new personnel.

ME question: Is a collaborative approach (i.e., compliance being the goal more than citations written) in prospect among stakeholders to address safety issues?

> *a. Could new miner and management training be a common ground for stakeholder cooperation as tended to exist between regulators and producers in safety leaders such as Pennsylvania and Illinois in the "good old days," i.e. pre-FCMSHA.*

It will play a role, but the political environment will limit that role. In reaction to that environment, MSHA likely will be focused on enforcement, as opposed to compliance assistance. Recently, collaboration by industry stakeholders has played a key role in developing solutions to complex safety issues. Joint Partnerships were formed related to diesel particulates, noise, and respirable dust, e.g. personal dust monitors. These Partnerships made positive progress in dealing with difficult regulatory issues. Unless the current political environment changes, however, collaborative efforts of this type will be limited.

ME question: Safety, for many years, has been treated more subjectively. Do you see funding in all stakeholders' sectors rising? If so, what order-of-magnitude is likely or desirable?

I think you'll see more government funding. The NIOSH mine safety group has received some additional funding as a result of the MINER Act. I think there will be more funding of a similar type as we go forward. I think there's a realization that we have to reestablish the mine safety research function that was lost when the Bureau of Mines was abolished.

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In addition, UG coal mining companies will have to spend more capital dollars to meet the new regulatory requirements created by the MINER Act and similar state regulations. In addition, proactive companies like Arch will continue to fund safety improvements. In the past 1½ years, Arch has spent over $2 million on implementing our BBS process. We're doing so because we recognize that it's the right thing to do. We also feel that it helps with recruitment and creates a competitive advantage.

ME question: U.S. mining engineering schools have traditionally been a major source of management. Their strength has been severely sapped in recent years and political (especially funding) support has diminished. Evidence: closures of several. What can, should, and is being done?

This is a cause for concern. The industry needs to support the remaining mining engineering schedules in every way practical. Funding scholarships, internships and research are a few of examples of how necessary support can be provided.

MID- AND SMALL-SIZE OPERATORS—voices in the wilderness?

According to one coal industry executive, of the 26 coal-mining states in the nation, there are 10-12 significant underground producing states, nine of these are in the East, to which could be added, along with the majority of underground coal mining considered less than significant.

In the Illinois Basin and throughout Appalachia, from Pennsylvania to Alabama, where America's underground coal mining is concentrated, the story is the same, and the explanation obvious. As these small to mid size operators point out, the large coal operators simply have more tonnage over which to spread the significant costs inherent in meeting the new set of regulations, and the staggering increased penalties when they don't.

More daunting still to the smaller operators—with all but very few exceptions—is what these operators see as a conscious, albeit hidden, agenda to drive the small coal operator out of business by a coalition comprised of the Mine Safety and Health Administration, organized labor—the United Mine Workers of America (UMWA) and, to a lesser degree, the United Steel Workers of America—and environmental activist groups and their allies in Congress.

"I predict we will lose half the small coal mines in the country," offered one operator, "and in 10 years the only coal mines operating in Pennsylvania will be the three that now run longwalls.'

Another operator with several mines in northern Appalachia said, "Absolutely," when asked if he saw a *sub-rosa* agenda in enforcement cited by others of comparable size. "The federal mine inspectors have been right up front about it, telling us they are being 'whipped' to write more violations, and more serious violations with more severe assessments. We have been told by them that it's turned into a quota system."

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Generally, MSHA citations progress from 104As, the basic citations that can be S&S or non-S&S (Serious and Substantial) to 104Ds (where injury to a miner is deemed likely), to 104D Orders (unwarrantable violations where the operator, a supervisor, was aware of the situation but it was not corrected) which are closure orders, to a new category of "flagrant" (three consecutive 104D orders for the same violation of law) where MSHA calculates the degree of negligence and under which already have resulted fines of $220,000.

To the mine operators, this level of enforcement is the "two" of the "one-two punch" being delivered to the small and mid-size coal operators, the "one" being how the new federal regulations were formulated, not through due process with public hearings and comment periods but through emergency temporary regulations (ETRs).

"From the very beginning," noted another operator, "the industry has been excluded from the process and, while the industry never was given the opportunity to have any input leading up to what became MINER Act I, the UMWA had been in the backroom." Again, there were but a few dissenting voices from among the more than dozen coal mining and state coal-association executives interviewed for this article; and only one who insisted there was "some" industry input during the process.

"If that were the case," queried one of the small coal operators, "how is it that many of the 'overlooked' issues that were incorporated into the Supplemental MINER Act are a UMWA wish-list? The union has had its finger in this pie since the beginning," he continued, "and it is obvious that its intent is to drive the little guy out of the industry; the union's strategy being that it will be easier to organize the major producers when there no longer are any independents around."

Somewhat surprising was the fact that the operators interviewed themselves were not astonished that the Supplemental MINER Act not only was supported by but was co-sponsored by Congressman Nick Rahall (D-WV). "Congressman Rahall is not a strong supporter of the coal industry," stated one operator, "he is a strong supporter of the United Mine Workers of America; and there is a difference. Why else would he be supporting, be co-sponsoring a bill that was authored by an environmental Congressman from California, George Miller? How many coal mines do you see in California? It's incongruous, a Congressman from the second-largest coal-producing state teaming up with a Congressman from the largest environmentalist-influenced state."

The same strange bedfellows—an environmental Congressman and a coal mining Congressman, Miller and Rahall, respectively—were to be found together again as co-sponsors of the Miner Health Enforcement Act of 2007 (HR2769), which Miller has been quoted describing as "part of an effort to clean up years of neglect and backsliding by President Bush's Administration and a complacent mining industry."

Apparently, that "effort" brought together Congressmen Rahall and Miller, Congresswoman Lynn Woosley's (D-CA) Subcommittee on Workforce Protections of the Committee on Education & Labor and Senators Ted Kennedy (D-MA) and Patty Murray (D-WA) who together announced in June, "a mine safety and health initiative to help improve health and safety in U.S. coal mines," noting that HS 2768 (S-MINER Act) and HS 2769 "are part of that initiative". News reports at the time said similar legislation was expected in the Senate.

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Among other things, the health and safety act would provide MSHA with subpoena powers and create an ombudsman "to hear miners' complaints and protect whistleblowers"; which one coal operator said sounded "more like a czar than an advocate". The Act also would allow supplemental mine accident investigations by the "independent" Chemical Safety Board. (In late July, President Bush nominated John Bresland of Shepherdstown, WV, to head the Board. The Board is charged with making safety recommendations to the nation's chemical industry, as well as investigating major chemical accidents.)

"The problem," one operator commented, without reference to the aforementioned, "is not with the men (MSHA inspectors) in the field but with those who are writing the laws and involved with the process when politics enters into it; when the environmentalists and labor are included and industry is excluded."

Also commenting on where the lies, a small coal operator said: "I don't believe it's an MSHA agenda to get rid of the small operator; just look at the author of Mining Acts I and II (the Supplemental MINER Act), George Miller (D) of California. With no mining background, this is just great exposure for him. When politics enters into it, when (mining issues) are decided on political influence, you have problems. Miller just doesn't want mining. It has nothing to do with mine safety, nor with the safety record of the industry."

The industry's safety record was one topic on which everyone interviewed commented. Unanimous in their sympathies for the victims and their families who suffered the combined tragedies of Sago, Aracoma, and Bailey mines, the operators and executives also pointed out that these events were anomalies in what had been, and continues to be, an outstanding safety performance by the industry. As one operator noted, "The loss of life is tragic. The loss of one life is tragic. Still, preceding these events the industry had been establishing record after record in reducing accidents and fatalities, and it continues to do so. But, how do you express that to the public without sounding uncaring or callous? I don't know and, apparently, neither does the industry, nor those who represent it."

Offered another operator, "There is real distrust between Congress and MSHA. There is no trust in the industry, none, and our main lobbying group has lost credibility with Congress."

That, some feel, partly may explain the absence of industry input during formulation of the Acts. Across the board, the participating coal executives and operators cited numerous instances they believe demonstrate an over-reaction to the mining tragedies, resulting in over-reaching regulations that they say, left unchecked, will result in the demise of the small and, quite possibly, the nation's mid-size coal companies.

"Would you believe," asked one operator of several small mines, "one person involved in the legislation actually proposed that every miner carry 10 self-contained self-rescuers (SCSRs) to ensure he/she would have an ample supply of oxygen should it be needed? At 5.5 to 6.5 pounds each, that's 55 to 65 pounds a coal miner would have to lug around all day. Now that's preposterous (especially in "low coal"), and was recognized as such, fortunately. But, unfortunately, other things were not."

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Carried or not, in many, many instances, between what has to be carried and what has to available, the total number of SCSRs that must be provided per coal miner underground typically totals 10 units, operators said. According to the new regulations, each miner must have two units virtually within reach. Another unit per miner must be kept on the mantrip and additional units must be stored in caches in both the primary and secondary escapeways.

The number of caches is distance- and time-dependent, from a maximum of 5,700 feet to a minimum of 2,000 feet, or the distance that can be traversed in an hour. West Virginia requires 1,000 ft that, under the proposed S-MINER Act of 2007, would become the industry standard.

"I don't know how the small guy is going to stay in business," offered an official of one of the larger mid-sized companies. "These SCSRs cost between $550 and $600 each. Our company already has spent $6 million on these units, and other companies more. And then there are the on-going expenses of maintenance and replacement of the units. Additionally, fresh airbases, costing up to $88,000 each, will add another $3-6 million in costs, depending on the size of your operation."

Beyond the cost of the SCSR units, another operator noted he is supplied by two different manufacturers, doubling the training, and retraining of every person underground in their use. "It was even suggested, in order to get as many SCSRs on hand as quickly as possible that we should purchase units from a third manufacturer. Not only would that mean triple training and retraining, imagine the confusion that situation could cause in an emergency, when people are under stress. A third version would have been ludicrous."

"The bigger problem we have," offered the person reporting $6 million in SCSR expenditures, "is that we we're proactive in our safety efforts before all of this. We were developing self-monitors and designing personnel safety systems into our mining equipment. While these efforts are on going, they have been forced to the back burner."

"New regulations call for all employees underground to wear personal dust monitors," said another coal executive, "despite the fact that 90% of the employees are not at high risk. These units," he continued, "cost $7,000 to $10,000 each. That's bad enough when you have 10 people underground, but what about 100? And then there are the additional costs of a technician, maintenance, replacement, etc. None of that is value added to the safety of the lower risk employees."

Returning to the previous discussion, the spokesperson said: "Additionally, there is another huge mistake being made. We're not against shelters for the sick and injured, but in an emergency of the scope being addressed the idea is to get the hell out. Instead, here we are talking to our young miners about shelters when we should be talking about escapeways, how to escape, how to approach doors, when to don SCSRs and when to take them off, when to hunker down, and when to escape. The emphasis should be on escape, not on hunkering down, but that's not the law."

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Another operator noted that SCSRs present multiple problems. "The industry was required to purchase the units quickly, at least to have a purchase order within 30 days. That meant you had to take what was on the market, or could quickly be put on the market; no thought was given to moving forward with better designs. We're spending millions of dollars for old technology.

"Then we are told to put units in caches at certain distances determined by height and walkability in both the primary and secondary escapeways. Many of our escapeways run parallel, a breakthrough apart. Where they did, we wanted to put in a crosscut with two walls and two doors to be accessible from either escapeway. MSHA said no. As a result, we have a cache of SCSRs on one side of a wall with the same number of units cached on the other side of the wall, all intended for use by the same people. That just doesn't make sense."

While complying with what is the law in breathable air chambers and SCSRs is extremely costly, according to the operators at least what is necessary and acceptable to MSHA is known; such is not the case with meeting the new regulations on seals, which are both costly and unknown.

As explained by a mid-Appalachian operator, "Under the regulations we now have to submit a separate seal design plan for MSHA's approval, where before seals were simply part of the ventilation plan. Not only that but, while waiting for approval of the plan, we have to proceed not knowing if what we are doing will meet with that approval. We can't simply stop mining until MSHA gets around to us."

In the experience of one mid-size coal operator, his company, in an effort to comply with an MSHA order to strengthen their concrete foam block-seals, had installed 92 Mitchell concrete seals. Now banned, MSHA ordered them to reinforce those seals with a third and, in some cases, a fourth seal. As a result, he said, the company had to temporarily close the mine. Offered another operator, "Would you believe, to satisfy MSHA we just completed one seal that was eight-feet thick?"

The difficulty of complying with an every-changing situation is but one concern over seals. According to several operators, but not all, there is a real concern that they could reach the point where the strength of seals MSHA mandates could exceed the strength of the coal pillars, particularly in retreat mining. "This dynamic between seal and pillar strength is of real concern to some of us," said one operator.

Of equal concern to some and greater concern to others—inverse to the size of their operation—are the new mine-rescue team requirements. While there always have been differences among the states—from state teams historically providing full coverage, as in Kentucky, to state teams not even entering the equation, as in West Virginia—the new rule applies to all: Full coverage will be provided and it will be in place by Dec. 15, 2007.

While MSHA gives several options on the composition of mine rescue teams, minimally, two members of each team must be employees of the mines being covered. "For a small operator, this can be a real problem," offered one company official. "Two men from a workforce of 40 represent 5% of his workforce. For a company with mines employing 600 people, this is no great problem; it could field two complete teams with that percentage.

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"And then" he continued, "there are mines with under 20 people. How can they possibly take two people away from production so that they can be properly trained, and remain trained, in mine rescue work. Not only that," he added, "try getting two people out of 10 who want to volunteer for that; it's tough, dirty, and dangerous work. Not everyone wants to do it; not everyone can do it."

Another issue facing the operators, particularly in Appalachia, is distance. Mines with over 36 employees must have a mine-site rescue team. For smaller operations, there must be a mine rescue team within an hour of every coal mine, half the time it was before the Act. And that's an hour, not by way the crow—or a helicopter—flies, but in driving time, which compounds the problem for teams covering more than one mine and is a serious impediment in remote areas of Appalachia.

As the smaller operators struggle with this—and all operators address the problems of seals, managing the costs of breathable air stations and, more so, the almost prohibitive costs of SCSRs—the are faced with what lies on the horizon, some of the "catch-up" included in the Supplemental MINER Act; among them a reduction in respirable dust from 2 milligrams to one. "That," said one operator with longwall sections, "is going to be a real problem for both longwall operators, as well as operators in low coal who have to cut rock in order to maintain a minimum working height. And it's an unnecessary problem," he added. "There is no justification for halving the allowable dust level. None."

In addition to any additional requirements, what also worries operators is the compression of time within which the more stringent regulations must be met and the significant increases in the penalties that can be assessed when they are not. According to them, what were $60 fines are now $300, or more; what were $300 now are in the thousands, and what were in the thousands now are in the hundreds of thousands.

Simultaneously, operators also seem to think 'the skids have been greased' to get them on the Pattern of Violations list, with a Kentucky spokesman noting that some of that state's marginal operations in the east already have succumbed as 'pattern violators.' "It was just too expensive for them to make the necessary changes," he said, "and they shut down."

However, they say the problem is not at the inspection level. It's higher up in the agency. "The MSHA inspector is trying to do his job, the hostility is in the next step up," said one operator, while another offered: "I have been told by MSHA inspectors that their superiors have said '*you will write*' more violations, and more serious violations.

"Additionally," he continued, "they tell us they have been warned that supervisory personnel would be checking mines that they have inspected to determine if they had failed to write up anything that could have been. In which case," he continued citing an MSHA inspector, "there will be disciplinary action. It is, as far as I'm concerned, an effort on MSHA's part to drive the small operator out of business."

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It's not just the inspections and orders written, it is the significantly increased cost of those orders, operators said. Among the examples given, one mid-size operator noted that a non-S&S—serious and substantial—violation that an inspector would have written prior to the Act would have carried a fine of $60. "That fine now can run $300," he said. "And they have gone crazy with the point system, the multiplier used in arriving at the final assessment.

"Let me give you an example," he offered. "We had a small coal spill on a conveyor belt. Normally, the inspector would have written us up for a non-S&S at $60 and assign one point for the person being exposed to it as he/she cleaned it up. Under the new regulations, because we had 72 people, '*because there was the possibility that everyone could have passed that point sometime during the shift.*' he assigned the maximum number of points. That $60 fine became a $7,200 assessment. How many of those do you think a smaller operator like us can stand? Not many.

"Worst of all though," he said, "is the ease with which a company can be progressed (sic) from S&S violations to unwarrantables to having a pattern of violations. At that stage, all it takes is a few orders and, as a small operator, you are either closed or you out of business."

Offered another operator with mines in Virginia and Kentucky: "On the number of inspections, we have not been having a great many more than before (the Act), but the inspections themselves have changed. A lot more things are being written up, a lot more S&S, and we are going to see changes as far as 104s are concerned. We already have seen what this is going to cost. We just received our first group of assessments (under the Act) and they're double to quadruple what they were under the previous regulations."

More specifically, one operator cited an instance involving a roof bolting machine that had an exposed connector, a shock hazard, and was written up as an S&S violation. "Under the old system, the fine for that would have been $600," he said. "Under the new rules it was $2,000."

As the violations being written and the assessments being levied both increase, recourse is decreasing, the operators agree. "Prior to the Act, good-faith consideration was given when an operator responded immediately and remedied a situation cited by an MSHA inspector," it was explained. "No longer; there is no credit for good faith.

"Additionally," he continued, "when an operator felt he was being unjustly charged or that there was an error in the citation, he routinely could request a hearing before an MSHA conference officer. These conferences always have been rather low-keyed and involved the inspector, the MSHA conference officer and mine personnel; they never included lawyers on either side.

"Based on the evidence at hand, the explanation of the mine personnel what the company did or didn't do or would do, the hearing officer could reduce the assessment, reduce the citation or even void it. Now," he said, "we have to request a hearing and, within that request, we must include the basis on which we are making the request, exactly what it is we are objecting to, and the rationale we intend to use in arguing it at the conference. Then MSHA would decide whether or not that conference would be granted. Never mind a level playing field; we don't even get to play."

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Another frustrated operator related how he just had returned from a problem solving session with MSHA. "The confusion within MSHA is so total that the meeting was a complete waste of time, just as conferences now are a complete waste of time."

Compounding the problem—not only for the small- and mid-size coal operator, but the large producers as well—is that, as one operator described it, "There is not 'one' MSHA, there are 11 MSHAs; distinct managers are given a lot of authority and each district operates as a fiefdom, within which the district manager is a god," he said.

"There is no consistency within MSHA," he offered. "What is allowed in one district is unacceptable in another; what the interpretation of a rule is one district is entirely different in another. There is no cohesiveness; there is no oversight. It's an impossible situation."

If MSHA itself is bewildering to the small- and mid-size operators, where do the various state agencies now fit into the picture? From the viewpoint of most small and mid size coal operators and their representative associations, though not all, obviously, Kentucky and Virginia have handled the situation best, West Virginia the worst. Pennsylvania received mixed reviews and the rest mentioned fell somewhere between.

"Kentucky handles its mine enforcement well," it was said by more than one coal operator. "It's their opinion, and the way they operate, that, if you are in compliance with the federal regulations, you are in compliance with theirs."

"What Kentucky does best," said one executive, "is work with the coal operator. 'If you have a problem, how do we solve it?' That's the approach. Virginia was the smartest. It sat back and waited for the dust to settle before considering if there were any changes necessary in Virginia's regulations. So far there haven't been," he said.

Pennsylvania's state regulatory efforts received mixed reviews, but essentially the reports gave a picture of a state program that has gone from good, to bad, to good, to let's see. "How well the (state) agency interrelates with the industry in large measure is a reflection of the man in charge," one official noted. "Once, it was very much a cooperative approach; instead of writing citations and assessing penalties, the emphasis was on problem solving.

"I would have to say, between the two agencies, what problems we have had typically has been with the state, driven by whoever was in charge of deep mine safety. As far as the federal is concerned, on the local level we always have had good relations with MSHA; any problems we did have emanated from above. It's ironic, right now in Pennsylvania we have a better working relationship with the UMWA in mine safety than with anyone."

West Virginia, on the other hand, was said to have "led the way for the federal regulations." "We have West Virginia to thank for new MINER Act," offered one operator, "and they seem quite proud of that."

The West Virginia perspective was expressed somewhat differently: "West Virginia is ahead of the pack (the other states) in meeting the requirements of Act I," a coal industry executive said. "Act I, was patterned after West Virginia legislation passed in January 2006; the Act was passed June 6."

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"It began right after Sago," said the previous speaker, "when West Virginia Governor Joe Manchin promised there would be regulatory changes within 24 hours, and there just about were, though that does not necessarily mean they all were changes for the good.

"On the other hand," this executive continued, "if, as I understood him to have said, he wants to see changes made to resolve duplication in regulatory inspections by the State and MSHA, that could be a positive thing. As I understand it, Governor Manchin is proposing, for example, if the Federal inspector inspected conveyor belt A and the State inspector inspected belt B, fine let's accept those and move on to belts C and D, or some other areas of the mine. Having the two agencies accept each others inspections, and putting an end to duality, would be a good thing," he said. "However, I've been around this business 30 years and I know that can't happen. I'm not saying the Governor isn't sincere, and it's logical, it's just not going to happen."

The bottom line of all this—which is exactly where the MINER Act is impacting the small and mid size operators—is not encouraging; even more so the even more extensive changes under the Supplemental MINER Act of 2007 (Act II) and the Miner Health and Safety Enforcement Act of 2007, also co-sponsored by Congressmen Miller and Rahall. On this, there is nearly total agreement among the operators and the State coal associations with whom there was contact.

As one coal-involved attorney expressed it, "It appears to me, Act II has everything not gotten into Act I; it's pretty darn stringent. That there may be an agenda against the smaller coal operators is more conjecture than anything else but, if there is an agenda, it really is going to hurt a lot of people who do follow the law along with those who don't."

A Pennsylvania coal man expressed it well, if not best: "Maybe I'm straining under the pressure from all of these regulatory changes, but with all that has occurred in the industry in the last three to five years, our industry has remained in a constant state of flux. Uncertainty abounds, which can translate into 'pauses of indecision' by miners, supervisors, and even regulatory personnel at critical times. If true safety were the goal, we should be giving our miners the tools they say they need and give them appropriate amounts of time to train, implement, use and refine the usage of those tools. (And some of those tools) may be a regulatory change in equipment, methodology, or systems."

Amen. Still, whether the strong majority who do see an agenda to put the smaller operators out of business are right or the very small minority who don't are correct, they all agree the small- and mid-sized coal operators will be hard pressed to meet the increased costs involved in the MINER Acts with the tonnages they produce, and the smaller the operator, the larger the problem.

To them, it's a prize fighter's one-two, followed by a crushing left hook...eight, nine, ten. You're out.

-

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August 17, 2007

Representative George Miller
2205 Rayburn HOB
Washington, D.C. 20515-0507

Dear Honorable Mr. Miller:

Nugent Sand Company is a 110 year old sand and gravel mining company with a headquarters in Louisville, Kentucky. H.R. 2768, known as the Supplemental Mine Improvement and New Emergency Response Act of 2007, or S-MINER is a premature piece of legislation. I would like to take this time to express my opinion on this proposed piece of legislation.

First, this act is premature in that the MINER act passed in 2006 has not yet had the opportunity to be fully enacted. It takes time for companies as complex as mining, both surface and subsurface alike, to implement such sweeping changes as proposed in 2006. To propose additional changes before the 2006 act is fully in place would subvert those efforts.

Secondly, the safety record for mining has been improving for some years now. Efforts by management and miners at the mine level are beginning to show results. To add additional changes may add roadblocks and stall these proven procedures that are continuing to show results.

Finally, no other industry as complex as the mining industry has been saddled with a one size fits all attempt at regulation. Each and every mine is different with different problems and different safety concerns. To make this act applicable to each mine would cause undo hardship on an industry that runs on a very tight margin for profitability as it is.

I urge you to allow the existing MINER bill to be allowed to work and to oppose efforts to pass the S-MINER bill until it is shown to be needed. If you have any further questions, please contact the government affairs office at the NSSGA at (703) 525-8788. Thank you for your attention.

Sincerely,

Thomas C Nugent III
President

JUL 27 2007 3:26 PM FR PORTLAND CEMENT ASSN408 0877 TO 2022259571 P.02

PCA
Portland Cement Association

July 27, 2007

The Honorable Howard McKeon
U.S. House of Representatives
Ranking Member
House Education and Labor Committee
2101 Rayburn House Office Building
Washington DC 20515

Dear Congressman McKeon:

We write regarding the *Miner Health Enhancement Act of 2007* and the *Supplemental Mine Improvement and New Emergency Response Act of 2007 (S-MINER)* to bring to your attention our concerns about this legislation. The Portland Cement Association is a trade association representing cement companies in the United States. PCA's U.S. membership consists of 45 companies operating 106 plants in 35 states and distribution centers in all 50 states servicing nearly every Congressional district. PCA members account for more than 95 percent of cement-making capacity in the United States. Cement is a strategic commodity and essential component of our nation's infrastructure.

The cement industry is committed to making our product with the highest commitment to safety. Although only in its first year of implementation, the *Mine Improvement and New Emergency Response (MINER) Act* passed by Congress last year has already contributed to significant success in improving safety. Our concern is the *S-MINER* bills are premature because they come before the industry's full implementation of the *MINER Act* and therefore could ultimately undermine the important progress which has been gained.

Since the *MINER Act* was signed into law, the Mine Safety and Health Administration (MSHA) has taken aggressive action to implement its provisions. The mining industries have invested more than $250 million complying with the Act's mandates. Due to recent MSHA policies, enforcement and resulting citations are increasing on industries which have already established an impressive record of improving incident and fatality rates. To enact further legislation is premature and likely to cause confusion for the industry and for regulators, increasing the risk of inconsistent inspection and enforcement and threatening continued progress.

The one-size-fits-all approach of this legislation will not necessarily improve safety. However, it is likely to adversely affect the competitiveness of industries like cement that contribute to the security, economic growth, and prosperity of our country.

500 New Jersey Avenue, N.W., 7th Floor
Washington, DC 20001
202.408.9494 Fax 202.408.0877

www.cement.org

JUL 27 2007 3:26 PM FR PORTLAND CEMENT ASSN408 0877 TO 2022259571 P.03

Thank you for your consideration of our concerns on this important issue. Please do not hesitate to contact me should you have any questions regarding PCA's perspectives on this matter.

Sincerely,

Thomas B Carter

Thomas B. Carter
Staff Vice-President
Environment, Health & Safety

cc: Members of the House Education and Labor Committee

** TOTAL PAGE.03 **

Mr. WILSON. At this time, I again appreciate having the hearing today. I think we have all learned a lot. I hope we have another hearing prior to going to markup.

Chairwoman WOOLSEY. I want to thank our distinguished panel of witnesses for testifying here today on the technical aspects of H.R. 2768 and H.R. 2769. The legislation before us today will ensure that the provisions of the MINER Act work and will also add additional safeguards for miners.

Sadly, the accidents at Sago and Aracoma, Alma and Darby could have been prevented; 19 miners could have been saved. As I stated at the beginning of the hearing, we will continue to work with all interested parties to make sure that these bills are the

best, the very best that they can be. But delay for delay's sake is absolutely unacceptable, especially when miners' health and safety is at stake.

I thank you again for coming.

As previously ordered, members have 14 days to submit additional materials for the hearing record. Any members who wish to submit follow-up questions in writing to the witnesses should coordinate with majority staff within 14 days.

Without objection, the hearing is adjourned.

[Supplemental materials submitted for the record by Ms. Woolsey follow:]

AMERICAN SOCIETY OF SAFETY ENGINEERS,
1800 EAST OAKTON STREET,
Des Plaines, IL, September 19, 2007.

Hon. GEORGE MILLER, *Chairman,*
Committee on Education and Labor, U.S. House of Representatives, 2181 Rayburn House Office Building, Washington, DC.

RE: *ASSE Comments on Mining Safety Reform Legislation (HR 2768 and HR 2769)*

DEAR CHAIRMAN MILLER: On behalf of the 32,000 member safety, health and environmental (SH&E) professionals of the American Society of Safety Engineers (ASSE), we respectfully ask that you and the members of the Committee on Education and Labor consider the following comments on the two legislative initiatives aimed at improving mine safety currently pending before the Committee—the Supplemental Mine Improvement and New Emergency Response Act of 2007 (S-MINER) (H.R. 2768) and the Miner Health Enhancement Act of 2007 (H.R. 2769).

Our comments reflect directly the experience and expertise of leading safety professionals in the mine industry who are members of ASSE's Mine Practice Specialty. The Mine Practice Specialty is one of thirteen practice specialties organized to help advance common principles of safety, health and environmental management to protect workers in all workplaces. Like all Americans, our member mine safety professionals are deeply troubled by any death in a mine. They go to work each day to do all they can to prevent these tragedies. Like you and the Committee members, they want to make sure all that can be done to prevent the loss of life and injuries in this nation's mines is accomplished.

Needed: An Overall Mine Industry Risk Analysis

Most of what is proposed in HR 2768 and HR 2769 will help prevent loss of life and injuries. Some provisions are not realistic given the current capabilities of the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) and may take away from the ability of these agencies to advance safety in realistic ways. A few provisions, though not directly safety issues, challenge the due process rights of mine owners and may be unnecessarily overbearing for the great majority of mines that work safely. In that regard, it is also important to note that most mines are small businesses. Applying MSHA's definition for a small mine (fewer than 20 workers), about 56 percent were small mines in 2002. Using the Small Business Administration's definition (fewer than 500 employees), 95.5 percent of mines are considered small businesses.

Our member mine safety professionals strongly believe, however, that this legislation—as does the overall mine safety debate—misses a necessary approach to achieving safer mines. As our members see it, each time a mine disaster occurs, another serious mine safety problem comes to light that turns out to have been a known significant risk within the mining community. For example, underlying the specific failures that led to the Sago disaster was the industry's quick rush to opening long-closed mines due to the improving market for coal. In the most recent tragedy at Crandall Canyon, the mine's catastrophic failure may well have been impacted by flaws in the mining and roof control plans. When companies engage in such a meticulous process as retreat mining, it becomes critical to have mine plans examined and reviewed by experts with the requisite knowledge and experience to detect potential concerns. This may prove to be more an issue of inadequate support services and oversight than regulatory inspections.

This nation's mines are already the most regulated workplaces in America. When it is estimated that OSHA would need about 24 years to inspect every general industry and construction workplace in America once, MSHA inspects each mine in this nation multiple times each year. No doubt, specific improvements in inspec-

tions, enforcement and an emphasis on improved technology and rescue capabilities are needed. We urge the Committee, however, also to look beyond specific fixes to establishing an overall approach to assessing safety and health risks across the mining industry that would be similar to the way a safety professional approaches a troubled worksite.

When a safety professional enters a worksite, professional training dictates that the first task is to look throughout the workplace and make an assessment of the overall safety and health risks. By developing risk-based priorities, he is able to make the most effective use of his resources to address the issues that most directly put workers in peril. Focusing too soon on specific risks could easily overwhelm the crucial need for an overall understanding of the relative risks workers face. Once an overall assessment is accomplished, the safety professional will address each risk in the order of their relative danger to workers, with the resources available to address each risk in mind.

ASSE believes that, at this time especially, the same kind of overall safety analysis is needed for the mine industry as a whole. We urge this Committee, through an amendment to this legislation, to task NIOSH to convene a stakeholder symposium with the specific goal of conducting a mine safety risk analysis for the mine industry that would identify the most dangerous risks and establish a hierarchal ranking of the severity of those risks so that the focus of mine owners, the resources of MSHA and NIOSH, and the actions of Congress can be targeted to the most dangerous risks first. Such an analysis would create the foundation for what safety and health professionals would hope could be the establishment of a risk-based approach to improving those key issues that have proven over the past twenty months to expose underground miners to the greatest peril.

From our members' viewpoint, the majority of workplaces that fall under the authority of the Mine Safety and Health act of 1977 (Mine Act) share a risk profile that has more in common with heavy highway construction than with underground mining. They know that sand pits, quarries and other surface mining activities have maintained accident rates far lower than manufacturing and construction for several years. An industry-wide safety analysis could very well result in an understanding for the need for Congress to re-open the Mine Act to readjust the direction and scope of mine regulation so that the resources of MSHA especially could focus more directly on the elements of the industry and the risks that truly represent a clear and present danger to miners. Further emphasis on the broad scope of mining without consideration of these risks restricts MSHA from properly allocating and directing resources to the areas where they can do the most good.

This suggestion represents sound loss-prevention theory practiced by safety and health professionals in every kind of workplace, especially one troubled by injuries or loss of life. Given the repetitive tragedies that the mine industry has faced recently, the same overall approach is needed. ASSE and its members stand ready to help this Committee develop this kind of strategy.

Comments on S-MINER Act (HR 2768)

Supplementing Emergency Response Plans

ASSE greatly understand the urgency with which the provisions aimed at improving the chance that miners will survive a mine accident have been included in this bill. Each provision is worthy of further action, as each has the potential to save lives. Reiterating our previous comments, however, we urge you to amend the bill to make their implementation dependent on an industry-wide risk analysis to be conducted under the direction of NIOSH before placing these provisions into law. Our fear is that all these activities, if required in the time frames indicated, will overwhelm even the best efforts of NIOSH and MSHA to bring them about.

Provisions included in this section requiring the establishment of an advisory committee to determine applicability of regulations to underground metal and nonmetal mines are consistent with ASSE's proposal. We hope that Congress will ensure that NIOSH plays a key role in this evaluation since it is best situated to understand the many distinctions between the coal and metal/nonmetal underground operations that led MSHA to create different sets of standards for these commodities in the first place—non-combustible ore and dusts, fewer gassy mine issues, natural ventilation in some mines, and differences in mining methods, for example.

Clearly, some provisions included in the section Supplementing Emergency Response Plans are needed immediately, like ensuring that mines have post-accident communication systems meeting the most effective systems currently used, ensuring safety communications among personnel between mine shifts, and requiring 6-month self-rescue device inspections and notification. For other provisions, NIOSH and MSHA will find it difficult to balance the desire to meet the directions given

here with the realities of technology and their resources. For example, while it is laudable that the bill tasks the National Academy of Sciences with a study of lightening in mining, it is doubtful that mine inspectors or mine owners will be able to carry out the bill's provisions aimed at protecting miners. Each mine will have unique vulnerabilities to lightening, most of which we fear will be undiscoverable even under the best intentions. As safety professionals, our members are consistent in their dedication to using whatever knowledge and technologies are available to protect miners. But they do understand the frustration of being tasked to address relatively small risks when more pressing, even immediate risks need to be fixed.

Technology and mine emergency health and safety research priorities—ASSE cautions against an effort by Congress to set research agendas without the willingness to fund additional research beyond what NIOSH is already undertaking. Each technology the bill would require NIOSH to give due consideration does deserve more research. However, NIOSH has already undertaken what we believe is a highly competent review of its research priorities in mining through the National Occupational Research Agenda (NORA). Under NORA, a Mining Sector Council is already undertaking the kind of research analysis needed to set priorities. Congressional action should not detract from that effort.

Supplementing Enforcement Authority

Authority of inspectors—ASSE supports provisions that clarify the authority of MSHA and its personnel to direct rescue and recovery activities. In any rescue and recovery operation, a clear authority to take responsibility is always needed.

Transition to a new generation of inspectors—ASSE commends Congress for addressing the loss of experienced mine inspectors. The mine safety community shares this concern, as MSHA is projected to lose half of its current workforce in the next two to five years. The bill's provisions to ensure a transition to a new generation of inspectors will help MSHA meet this daunting problem.

Miner ombudsman—As written, ASSE cannot support provisions requiring creation of the Office of Miner Ombudsman within the Department of Labor (DoL). Given the discord and lack of trust that now exists between workers and the mining industry and MSHA, we fully understand the need for some assistance in representing those interests wanting to make mines safer and healthier for workers. However, much of what this position hopes to achieve is already addressed in MSHA regulations (some specifics?). We also do not believe that simply adding another position to an infrastructure for complaints, even if it is not working as well as it should, would guarantee the results the bill understandably wants to achieve. We urge you and the Committee to consider another approach.

What is needed in the mining industry is less another advocate than someone who could help resolve the various differences that separate not only miners from the industry and MSHA, but also industry from MSHA. We urge you to consider the creation under DoL of an independent office for arbitration of mining conflicts. Under rules established by the American Arbitration Association or similar organization, such an office could serve as a non-mandatory middle ground to resolve issues beyond MSHA's failure to listen to miner complaints about mine hazards. Other problems plague the industry and take away from effective safety enforcement, including inspectors with inadequate understanding of their responsibilities and small business mine owners feeling helpless in the face of a legal process easily brought to bear by MSHA. As it does in other industries, arbitration could very well prove to lessen the costs of enforcement. If such an office were staffed with mine safety and health expertise, as current provisions in the bill require an ombudsman to be, we believe the current difficulties in identifying and addressing mining risks could be improved.

Pattern of violations—While the intent of these provisions is well meaning, ASSE cannot support the provisions addressing pattern of violations. We would hope that Congressional efforts could focus on changes that will directly advance safety. From the experience of our members, MSHA already uses its pattern of violations powers and recently published a policy document to explain how patterns will be determined with more precision. A new penalty component is not necessary at this point, given the impact that a pattern finding will already have on mine operations. It would also be redundant given MSHA's new "repeat violation" penalty criterion in 30 CFR Part 100. MSHA added this in an effort to go beyond the dictates of the Mine Improvement and New Emergency Response (MINER) Act in order to heighten penalties for all classes of violations that indicate a pattern or practice of certain types of safety or health deficiencies. Consistent with our overall comments, we would hope that the attention of both Congress and MSHA could be directed to more pressing needs for improvement. This is not one of those areas.

Notification of abatement—Given recent history, believing that all personnel need to be removed from a mine following an operator's failure to notify MSHA that any violation has been abated is understandable. However, not every violation in a mine threatens lives and, under current law, MSHA already is empowered to impose a $6,500 per day penalty for failure to abate. It also may issue orders under Section 104(b) of the Mine Act that trigger withdrawal of miners from all or part of a mine under such circumstances. Also, our members report that MSHA inspectors are generally quick to revisit the mine to determine whether abatement has occurred. To ensure that this provision is targeted to truly threatening situations, where MSHA's resources should be targeted, we urge that the requirement to remove personnel following failure to abate be limited to citations that are significant and substantial.

Failure to timely pay penalty assessments—ASSE has no position on provisions aimed at ensuring timely payment of penalty assessments. This is not directly a safety issue. Our members, however, report that the difficulty often appears to be the MSHA's inability to ensure that penalties are collected and that adequate communications exist with the Department of Justice to ensure enforcement. While we understand the frustration in Congress with the failure to correct this problem, this provision could very well result in the closure of an entire mine over non-payment of a $112 penalty. Given the administrative problems MSHA has demonstrated in enforcing penalty assessments, such a result may be too harsh.

Penalties—The appropriateness of the various penalty provisions contained in the bill is beyond ASSE's expertise. In general, we do not take positions on what amounts are appropriate both to penalize those who violate safety and health laws and to ensure an employer's commitment to safety and health in the future. We would hope this issue could be the subject of research by NIOSH so that penalties can be constructed in a way that effectively brings about safe and healthy mines. Until research can provide that insight, it is difficult for our members to determine effective penalties.

In general, however, penalties that fail to cause mine operators to protect miners adequately are too small, and penalties that cause a mine owner to give up a business when conditions are correctable and the owner has demonstrated an overall commitment to operate safely are too large. From ASSE's viewpoint, a safety and health professional's work is to protect workers and property and to help a business do well. Good safety has a direct and positive effect on the bottom line of any business, including mines. We urge you and the Committee to keep that fundamental principal to safety in mind when considering appropriate penalties.

In that light, our members disagree with the elimination of criteria that consider the impact of penalties on a company's ability to remain in business. Small 5-person mines, for example, should not be faced with the same minimum penalties as multinational corporations when it comes to citations. A case-by-case analysis must be retained at all levels of enforcement.

Federal licensing advisory committee—ASSE applauds the inclusion of this provision in the bill, supports its enactment and respectfully asks that ASSE members be included in such an advisory committee. Many states already provide for licensing of certain categories of miners, foremen and those engaged in special activities, including blasters and electricians. Federal licensing could enhance portability of skills and give assurances to mine operators of employee competence. We urge inclusion of appropriately mine safety and health personnel who have the needed experience and have achieved appropriate accredited certifications such as the Certified Safety Professional (CSP), Certified Industrial Hygienist (CIH) or Certified Mine Professional (CMP). These certifications would fit well any federal licensing program.

Rescue, Recovery and Incident Investigation Authority

Emergency call center/contact information/mine location maps—ASSE supports provisions requiring MSHA to staff with qualified personnel a 24/7 emergency call center as well as the detailed contact information of rescue and mine personnel. Requiring maps of all operating and abandoned mines to be maintained on the DoL website is also a positive step forward. We do, however, question the need to provide search capabilities that allow mines to be located by congressional district. While a small point, anything that can be done to de-politicize this nation's commitment to mine safety needs to be taken. The other search criteria are useful enough for those who might know congressional districts.

Required notification of emergencies and serious incidents—ASSE supports provisions clarifying that certain categories of "accidents" could be reported within one hour, rather than within 15 minutes. In our members' experience to date, the15-minute rule is already proving somewhat infeasible, especially for underground operations with limited personnel available to render assistance while also being able

to communicate with MSHA. Perhaps Congress can revisit this issue in general and take testimony about the practical impact of the "15-minute" rule, especially now that MSHA's final report in the Sago case has indicated that the notification of MSHA was not a causal or indirect factor in the loss of life at that operation.

Emergency medical response—ASSE supports provisions intended to improve emergency medical response capabilities following mine emergencies. As we have expressed with other provisions, however, we urge that implementation of these provisions be done in the context of a thoughtful analysis of all the issues impacting the survival of miners and the capabilities of MSHA.

CSB—ASSE fully supports the good work of the U.S. Chemical Safety and Hazard Investigation Board's (CSB) efforts in helping industry understand and address chemical safety issues. We also understand the implied goal here of having for the mining industry what exists for the chemical industry and, with the National Traffic Safety Board (NTSB), for transportation—an independent authority with expertise to give industry unbiased assessments of accidents to help ensure they do not reoccur. Nevertheless, we cannot support this specific means of achieving that aim. CSB has specific capabilities in addressing chemical risks, as the NTSB does in transportation. It would only dilute that capability to ask it to become expert in mining. We urge you and the Committee to consider other alternatives, perhaps even establishing a separate independent agency to take on this work.

Respirable Dust Standards

The need to set appropriate crystalline silica and respirable coal dust standards is clear and long overdue. While the desire to set standards legislatively is attractive given the failure of OSHA and MSHA to move these issues forward, ASSE must be concerned with setting a precedent in dispensing with rulemaking, as the bill would do. ASSE's own proposal to update exposure limits urges use of negotiated rulemaking. Even under the best circumstances, setting an exposure limit is difficult given the litigious environment surrounding the safety and health field. Providing a means for all stakeholders to participate in a process will help disarm those who are intent on inhibiting any forward movement on exposure limits. In addition, the provision that specifies the sampling protocol is redundant and could cause confusion. NIOSH currently has sampling methods established for monitoring the respirable silica dust for both coal mines as well as other mines (NIOSH method 7603 and method 7500). These methods are effective when used in conjunction with good industrial hygiene practices—initial evaluation to determine those areas and operations to be tested, personal monitoring of representative operations for two individuals in the area in case of equipment malfunctioning or tampering, full shift sampling, and use of the specified number of blanks per samples collected to correct for contamination.

Comments on Miner Health Enhancement Act of 2007 (HR 2769)

Air Contaminants

ASSE fully agrees that the existing health standards now enforced by MSHA are outdated and are in need of revision. For the metal/nonmetal sector, MSHA had incorporated by reference the 1973 version of the American Conference of Governmental Industrial Hygienists' (ACGIH) Threshold Limit Values and the coal sector is governed by the 1972 TLVs. ASSE has long supported a comprehensive overhaul of both MSHA and OSHA permissible exposure limits (PELs) and has suggested that this be done through negotiated rulemaking, as discussed above. We maintain that this is preferable to dispensing entirely with rulemaking and simply adopting the existing and future NIOSH Recommended Exposure Limits (RELs).

Although NIOSH is well-qualified to make recommendations on appropriate health standards, these provisions are legally flawed because it would render the Administrative Procedure Act a nullity for the mining industry, depriving its members of their due process rights to be part of the rulemaking process through notice-and-comment standards development, as required by federal law. A simple fix to this problem is appealing, but simply mandating a solution would set a harmful precedent for avoiding formal rulemaking on other subjects relative to occupational and mine safety and health. The rulemaking process is one of the key mechanisms for ensuring that appropriate technology and sound science are recognized when setting requirements that carry heavy civil and criminal sanctions.

Asbestos

With respect to provisions intended to update MSHA's asbestos standard, ASSE urges caution in moving forward legislatively. ASSE participated in the ongoing MSHA rulemaking on this subject and fully supported adoption of the OSHA PEL by MSHA. Since that rule is near completion, it would be difficult to abandon the

regulatory administrative record that been created and substitute congressional fiat when dealing with the technological, scientific and geological issues related to sampling, analysis and mineral definitions that are so important when measuring asbestos in an environment containing naturally occurring non-asbestiform minerals. These provisions should be replaced with provisions mandating that MSHA complete its rulemaking.

Hazard Communication

ASSE understands the bill's intent to require MSHA to move forward in advancing hazard communications. However, the bill misses an opportunity to help the mining industry take the lead on an initiative that will bring it in line with the world's economy. Instead of requiring the agency to apply provisions of its October 2000 interim final rule, which was modeled on the now outdated OSHA HazCom Standard at 29 CFR 1910.1200, Congress should be requiring MSHA to look forward. The bill should require MSHA to begin revision of its HazCom standard (30 CFR Part 47) to adopt the Global Harmonization Standard (GHS), which is already under consideration by OSHA. It is critical for all sectors of American commerce to be able to market its products on a global basis. Mining cannot be left behind, and allowing it to do so makes little sense given the multi-national ownership of many U.S.-based mines.

Conclusion

The mining industry as a whole has made significant advances in mine safety since enactment of the Mine Act in 1977. Although the last several years have been marred by several high-profile underground coal mine disasters, both coal and metal/nonmetal fatalities and injury rates have been steadily declining. More focus in preventing deaths and injuries in minds is needed, however, and ASSE is committed to working with Congress and MSHA to further enhance mine safety and health through proactive initiatives and programs that can protect miners while also giving mine operators the tools they need to implement best practices and the latest technology.

ASSE was active during consideration of the MINER bill and in the MSHA oversight hearings during 2006. The Administrator of ASSE's Mining Practice Specialty, Michael Neason, provided helpful testimony before the Senate Health, Education, Labor and Pensions Committee on the Sago tragedy from the perspective of a mine safety expert. ASSE again offers the expertise and experience of its members in the event that the Committee holds mine safety hearings. ASSE and its members are pleased to be able to work with Congress to achieve our mutual goal of helping ensure that every miner has a chance every day to go home safe and healthy to their families.

Sincerely,

MICHAEL W. THOMPSON, CSP,
President.

March 24, 2008.

Hon. JOE WILSON,
U.S. House of Representatives, 212 Cannon House Office Building, Washington DC.

DEAR CONGRESSMAN WILSON: The Miner Health Enhancement Act of 2007 (H.R. 2769) and the Supplemental Mine Improvement and New Emergency Response Act (S-MINER) of 2007 (H.R. 2768) raise serious concerns for a broad spectrum of industries that are strongly committed to safety and health in mines and provide jobs and resources that contribute to America's homes, schools, hospitals, businesses, consumer and industrial products, and roads.

The Mine Improvement and New Emergency Response (MINER) Act, which garnered overwhelming bi-partisan congressional support and was endorsed by labor and industry prior to its passage little more than one year ago, has already contributed to significant success in improving safety. But much remains to be accomplished by both the Mine Safety and Health Administration (MSHA) and the industry to achieve full implementation. Diverting attention and resources away from the critical task of fulfilling the mandates of the MINER Act towards an additional layer of statutory requirements could ultimately undermine the progress that has been made on miner training and other vital objectives of the act.

Since the MINER Act was signed into law on June 15, 2006, MSHA has taken aggressive action to implement its provisions. Industry has invested more than $250 million thus far complying with the act's mandates. Most importantly, mining operations are on track to return to year-over-year improvements in mining safety. To impose further legislation at this time is premature, when the full impact of the

original MINER Act cannot yet be comprehensively measured. Further, and as explained in the enclosed paper, a number of the provisions of the new legislation are unnecessary and could be counterproductive to our shared mission of improving mining safety.

Safety is, and will continue to be, the highest priority of our industries. Thank you for your consideration of our concerns with the pending legislation.

Sincerely,

INDUSTRIAL MINERALS ASSOCIATION—NORTH AMERICA,
NATIONAL LIME ASSOCIATION,
NATIONAL MINING ASSOCIATION,
NATIONAL STONE, SAND & GRAVEL ASSOCIATION,
PORTLAND CEMENT ASSOCIATION,
THE SALT INSTITUTE.

NIOSH Comments on Mandatory Participation in the Coal Workers' Health Surveillance Program, Confidentiality Issues, and Potential Special Protections

Mandatory Participation: Medical surveillance is an important tool for disease prevention. Identifying sentinel cases can motivate actions to improve work conditions and better protect other workers. Also, early disease identification can lead to actions to reduce or eliminate dust exposure for the affected individual, hopefully improving his or her health outcome. Thus, on the surface, mandatory participation might seem like a positive step. However, the situation is more complex and there would be significant issues that would need to be addressed before instituting mandatory participation in the Coal Workers' Health Surveillance Program.

Steps would need to be taken to ensure that reduction of dust exposure, rather than medical screening, remains the first concern. The most effective means for eliminating coal workers' pneumoconiosis (CWP) is preventing dust exposure. Simply identifying workers who already have disease does not address this root issue. Furthermore, removing workers who already have disease from exposure will not fully prevent disease progression, so some individuals would still experience symptomatic disease. Thus, the primary focus in prevention should be to reduce dust exposure, not screen for disease after the fact.

There would also need to be a full understanding of how any mandatory federal x-ray program would impact state workers' compensation systems. For example, it has been our impression in at least one state that miners are reluctant to participate in surveillance and participation rates are low because participation might adversely impact on the ability to receive compensation for CWP. A miner may be required to file for compensation within a certain period or lose the right to file based on an x ray showing some disease and be paid according to the level of disease shown at that time even though the disease will often progress.

In addition, any program would have to take into consideration the ability of miners to opt out in certain circumstances. For example, there are female miners in their child bearing years. Such miners might want to opt out of x-ray screening out of concern for adverse reproductive outcomes. Even a "mandatory" surveillance program would need to make allowances for such situations by providing parameters for miners to opt out of having x-rays.

In addition to these issues, any mandatory surveillance program should also address potential interventions that may be needed as a result of the x-ray program. For many coal miners, work in the mining industry provides the best and sometimes the only option for employment in their localities. Mandatory surveillance would ideally need to be paired with programs to help miners with disease remain in the work force and maintain their financial status.

A final concern is that mandating participation in x-ray surveillance would result in a marked increase in the human and financial cost of the coal workers' x-ray surveillance program. Significant additional resources would be needed to take on a project of this magnitude.

Thus, it is not entirely clear that mandating participation in surveillance by miners is an optimal approach for preventing CWP. Furthermore, there would be significant issues and concerns about this approach. Also, additional interventions would need to be undertaken to mitigate negative impacts of mandatory surveillance.

Confidentiality Issues: The present Act requires the mine operator to pay for surveillance chest films. This leads to the mine operator having a contract relationship with the x ray facility performing chest films. Depending on the billing information

provided, mine operators often know which miners have undergone x-ray screening. This leads to concerns about confidentiality, especially in small work forces.

Another area of potential concern is leak of information from facilities performing x-rays, especially in small communities.

A known loss of confidentiality occurs when affected miners exert their rights for transfer to low dust jobs. This necessitates communication of their condition to mine operators. Fear of consequences may be one reason for the relatively low number of miners entitled to transfer rights who take advantage of them.

Potential Special Protections: Given that a major concern for confidentiality in the current program is the financial and contractual relationship between mine operators and x-ray facilities, measures should be taken to better separate these parties. Perhaps mine operators could pay into a fund, with the amount based on number of miners employed. The fund operator could then contract with x-ray facilities, removing the direct link to the mine operator.

Technical Assistance Comments on H.R. 2678 and H.R. 2679, Submitted for the Record by Jeffery L. Kohler, Ph.D.

The following technical assistance comments on H.R. 2678 and H.R. 2679 are in response to a written request, which was received on July 30, 2007, from the House Committee on Education and Labor. In that request, the committee asked NIOSH to provide written technical comments on the matters covered by the Mine Safety and Health Administration's (MSHA) written statement to the committee, dated July 26, 2007, that fall within NIOSH's area of responsibility and expertise. The Administration has not formulated a position on the legislation, but these comments provide NIOSH's answers to questions of a technical nature that fall within NIOSH's area of responsibility and expertise, including post accident communications, underground refuges, mine seals, ventilation controls, belt air, and the self-contained self-rescuer (SCSR) inspection program.

Section 4(a), Post Accident Communications:

The National Institute for Occupational Safety and Health (NIOSH) shares the Mine Safety and Health Administration's (MSHA) vision of completely wireless systems, which do not have any vulnerable infrastructure within the mine, and we continue to invest in research leading toward such systems. Our research, however, indicates that wave propagation characteristics in underground coal mines, combined with energy limitations in an explosive environment, will prevent completely wireless systems in most mines for many years to come. Thus, for the near term, there is a need to advance emergency communications technology while providing a foundation for future improvements that will lead to the realization of our shared vision. We also accept that it will be impractical to develop systems that will withstand any disaster scenario in every location within every mine. As such, we believe it is prudent to employ systems that will work in most mines under common disaster scenarios. Our research is demonstrating a practical path forward in which achievable technological developments can be used in the short term to significantly improve emergency communications while providing a platform for future improvements like wireless systems.

The language in the bill is consistent with our recommended approach. While all currently-available systems have vulnerabilities, we believe that systems such as the "leaky feeder" system and the "wireless mesh" system can be made more survivable through both physical and electronic improvements. While the bill uses the term "hardened," this may suggest a focus on physical structures, but there are also enhancements that could be made to the system architecture or electronics that would make the system more survivable, so we suggest substituting the term "improved" or "enhanced." Further, at this time, standard definitions do not exist for the term "hardened," which may lead to some confusion. We believe that the language of the bill as currently written would not interfere with current research and industry efforts to develop and implement a solution that is completely wireless, and consequently, we approve of that language, with the modification noted above.

Section 4(b), Underground Refuges:

We agree with MSHA on the need to allow for refuge alternatives in addition to refuge chambers; allowing alternatives will better balance the need for mines to provide refuge but also facilitate mine evacuations. NIOSH is investigating various refuge alternatives and will make specific recommendations in its report to Congress, which is due in December 2007. Hopefully, the language in the bill will allow a comprehensive use of refuge alternatives in addition to chambers. This will permit mine operators to choose from a suite of alternatives to facilitate both escape and rescue.

NIOSH is also investigating location guidelines for refuge alternatives, such as the maximum distance that a chamber should be placed from the face. Although the distance of 1,000 feet specified in the bill seems reasonable for many situations, it may not be the best metric. For example, the distance could be based on two parameters: the speed at which the mineworkers would be able to travel in zero visibility; and the capacity of their oxygen supply. In some mines, this distance could be significantly greater or less than 1,000 feet. Again, there would be value in referencing these metrics to the findings of the NIOSH research effort on refuge alternatives.

Section 4(c)(2), Mine Seals:

NIOSH Information Circular (IC) 9500, Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines, establishes a set of conditions to seal gob areas safely. Scenarios are described that require monitoring of the gob behind the seals, as well as those that do not require monitoring—the Circular explicitly recommends that, if a seal meets a particular strength standard (which depends on the configuration of the sealed area), there is no need for ongoing monitoring. The bill as written would require ongoing monitoring of all newly-sealed gob areas. That is a more stringent standard than is recommended by the Circular, and NIOSH does not believe such a standard is necessary. Further, to the extent that monitoring is to be required, NIOSH does not think it appropriate to include specific monitoring locations and procedures in legislation at this time, as additional research is being conducted. Additionally, NIOSH believes that the bill should be written to accommodate a full range of measures that could be used to improve safety insofar as gob explosions are concerned, rather than focusing solely on explosion pressure and monitoring practices.

Section 4(c)(3), Ventilation Controls:

Ventilation controls need to be designed to withstand the normal forces associated with mining and to provide improved resistance to overpressure from mine explosions.

The ventilation controls should be designed and constructed of materials that can handle the geotechnical conditions associated with stress and movement of the rock masses to avoid compromising their performance. For a particular set of conditions, the materials used for the controls may have to withstand movement of the roof and floor rocks, which requires a material that does not break when subjected to squeezing. Thus, ventilation controls should be designed to meet specific performance standards and should not specify use of particular materials. This would include consideration of the amount of overpressure the controls could withstand to ensure that the ventilation system is not completely disrupted in the event of an explosion. This is the approach that has been adopted in Queensland, Australia, in stoppings and overcasts, in their Schedule 4 Ventilation Control Devices and Design Criteria, of Coal Mining Safety and Health Regulations (2001). Their stoppings, overcasts, and regulators must be designed to withstand an overpressure ranging from 2 psi to 5 psi depending on the location. Their standard includes design requirements such as "fire resistant and of substantial construction" for certain applications. A similar approach in the bill would result in a higher level of safety.

Section 4(d), Belt Air:

The Technical Study Panel, established by the Mine Improvement and New Emergency Response Act of 2006, is investigating the use of belt air, and is addressing the broad issues of belt flammability and the use of belt air. Their findings can certainly help illuminate the discussion around the practice. Notwithstanding, we are concerned that the language of the bill would not even allow the use of belt air under any circumstances. This could create a significant danger in at least a few mining districts: those in which coal bumps are a problem due to the heavy overburden pressures such as in Utah and deep mines with high methane emission rates combined with significant ground control problems such as in Alabama.

A task force was assembled in 1985 to examine the complex issues of using two-entry longwall mining systems. Ground control ramifications, ventilations, and fire hazards were also reviewed. The technical team consisted of MSHA and U.S. Bureau of Mines staffs. Ground control stability in underground coal mines is influenced by several factors, which include geology, overburden, rock properties and in situ stresses, and mine design. Various combinations or these factors make generalized design recommendations difficult. For example, while it may only influence a small number of western mines in the Central Rocky Mountain region, the use of two-entry systems with a small yielding pillar has resulted in dramatic improvements in stability when extreme, primarily deep, mining conditions were encountered. By reducing the total load carried by the chain pillars, substantial reductions in bumps, roof falls, and floor heave have been realized. The two-entry gate road

designs seem to limit the stress interaction and provide for a more stable mining environment as attested by the bump/bounce, roof fall, and injury/fatality history. Depth is not always the only consideration; different material properties of the coal, coupled with weaker roof and floor, have eliminated bumps in the Southern Appalachian region. The requirements for additional ventilation to remove explosive gases necessitate using multiple intake and return entries with only minor ground control design considerations for controlling the vertical stress concentrations inherent with greater mining depths. While these issues only affect a smaller number of mines, they cannot be ignored and mine-specific variances would help ensure safety for these special circumstances.

Section 4(i), SCSR Inspection Program:

The U.S. Department of Labor (DOL) is required to establish a program for periodic random testing of SCSRs. Testing of these devices is currently being done by NIOSH through its Long Term Field Evaluation (LTFE) Program. This is a program through which NIOSH randomly selects 400 Self-Contained Self Rescuer (SCSR) devices from underground mines across the country (100 from each of the 4 types of SCSRs approved for use in underground mines) and removes them for testing to evaluate their continued functionality. NIOSH believes that its functional sampling schedule under the LTFE Program (*http://www.cdc.gov/niosh/npptl/topics/respirators/ltfe/ltfe.html*) has sufficient statistical power to ensure the functional performance of SCSRs that pass the manufacturers' inspection criteria. NIOSH lacks the testing capacity to test significantly more SCSRs in a given year. According to MSHA's analysis, this legislation could require the testing of about 20,000 SCSRs per year, and this would far exceed NIOSH's capacity. Further, NIOSH provides new SCSRs to replace each one removed from a mine because NIOSH functional testing results in the destruction of each unit tested. Currently, NIOSH bears the replacement costs although under the legislation these replacement costs would be shifted to industry. If the 5% testing requirement under the legislation is limited to non-destructive visual inspection that would be less objectionable; however, NIOSH would defer to MSHA to make such a determination.

NIOSH would defer to MSHA in determining the appropriate level of initial inspection verification necessary to assure miners are not using devices that do not pass the manufacturers' inspection criteria.

[Statements and supplemental materials submitted for this hearing were posted at the following committee Internet address:]

http://edlabor.house.gov/hearings/wp072607.shtml

[Whereupon, at 3:37 p.m., the subcommittee was adjourned.]

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