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**Review of Federal Mine Safety and Health Administration's
Performance from 2001 to 2005 Reveals Consistent
Abdication of Regulatory and Enforcement Responsibilities**

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Introduction

This report documents a very troubling track record by the Bush Administration and the Department of Labor in protecting the health and safety of tens of thousands of hard-working American miners. The Bush Administration has stacked the Mine Safety and Health Administration (MSHA) and the Federal Mine Safety and Health Review Commission (FMSHRC) with mining industry insiders. The Administration has sought budget cuts and staff reductions at the enforcement agency. It has rolled back proposed safety and health regulations, while implementing industry-favored changes. It has significantly reduced the amount of major fines for mine safety and health violations, compared to the previous administration. And even while it has operated with little to no oversight from the Congress, MSHA has adopted the Bush Administration's penchant for secrecy, refusing to fill Freedom of Information Act requests which had been routinely filled in the past. In the meantime, MSHA has also failed to ensure that the industry keeps pace with existing mine safety technologies, such as electronic tracking and communication devices and reserve oxygen chambers that could have saved lives at the Sago and Aracoma Alma mines.

Industry fills top positions at MSHA

From the outset, the Bush Administration filled top-level positions at the Mine Safety and Health Administration (MSHA) with officials from the industry it is charged with regulating. **Table 1** lists top-level MSHA political appointees with ties to industry.

Table 1. Industry Connections of Top-Level MSHA Officials during Bush Administration

Name	Position at MSHA	Prior Industry Positions
David Lauriski	Assistant Secretary of Labor for Mine Safety and Health	Executive at Energy West Mining
John Caylor	Deputy Assistant Secretary	Management positions at Cyprus Minerals Co., Amax Mining Co., and Magma Copper Co.
John Correll	Deputy Assistant Secretary	Management positions at Amax Mining Co. and Peabody Coal Co.
Mark Ellis	Special Assistant	Legal counsel to the American Mining Congress
Melinda Pon	Chief of Health for Coal	Management position at BHP Minerals-Utah International

In light of these appointments, it is not surprising that a number of actions taken by MSHA over the last five years comprise a troubling record of favoring the industry over the health and safety of its workers.

Proposed Safety and Health Regulations Withdrawn. With the new Administration, MSHA’s posture toward regulation and enforcement changed considerably. In its first few years, the Bush Administration dropped more than a dozen proposed health and safety rules left over from the Clinton Administration. The new head of MSHA, David Lauriski, explained to the Northwest Mining Association: “Earlier this week, the Department of Labor announced its new regulatory agenda for the coming year. If you have seen it, you will notice that it is quite a bit shorter than some past agendas.”¹ Joe Main, a former health and safety official with the United Mine Workers of America, told MSNBC: “Have I ever seen that many rules withdrawn like that? The answer is no. Have I ever seen this federal agency stacked with mining industry folks the way it is? The answer to that question is no.”² (Details of these withdrawn regulations can be found in Part Four of this report.)

Dangerous Industry-Favored Rules Become Law. In 2004, MSHA adopted a rule that allows mine operators to use conveyor belts to draw fresh air to the working face of a mine. In 1969, Congress made such ventilation plans unlawful, and MSHA had allowed exceptions only where special precautions were taken. When conveyor belts are used for ventilation, a fire on a

conveyor belt may spread more quickly and spread directly to the working face where miners are. The National Institute of Occupational Safety and Health (NIOSH) wrote that "...the practice of ventilating with belt air at any velocity is unsafe and unhealthy," and that "...the use of high velocities would increase fire and explosion hazards from coal dust." The January 20, 2006, fire at the Aracoma Alma Mine No. 1 in Logan County, West Virginia, killing two miners, is believed to have been a conveyor belt fire.³ Even while implementing this rule, the Bush Administration withdrew a Clinton-proposed rule that would have strengthened the requirements for flame-resistant conveyor belts. (See Part Four).

Rewriting rules for former employers. In 1997, David Lauriski proposed a new rule that would allow mine operators, like the company where he worked at the time, Energy West, to substantially increase the amount of coal dust in the mines. The proposal was not well-received. Then, in 2003, as head of MSHA, Lauriski turned his idea into a proposed rule at MSHA. Safety and health advocates for miners pointed out that the proposal simply increases the risk of black lung disease.⁴ After failing to garner support for the proposal from the rest of the coal industry, Lauriski dropped the proposal.⁵ On July 10, 2003, Democrats in Congress led by Congressman Nick Rahall of West Virginia offered an amendment in the House of Representatives to block this dangerous regulation. All Democrats supported the Rahall amendment, but 212 Republicans voted against the amendment. An embarrassed Bush Administration was forced to withdraw the coal industry-inspired regulation.

Delaying final rules on air quality. The Bush MSHA has repeatedly moved to delay full implementation of a federal regulation finalized under the Clinton Administration. The rule set air quality standards for diesel particulate matter (DPM) in metal and non-metal mines. Researchers have concluded that DPM exposure greatly increases the risk of a range of illnesses, including cancer and heart disease. Exposure in underground metal and non-metal mines over an eight-hour period can be anywhere from 27 to 162 times the level of exposure on the streets of Los Angeles over a one-year period. Scheduled to be phased in over five years, the rule provided an interim exposure limit to take effect in 2002 and a tougher final limit to take effect in January 2006. As detailed in a recent academic paper, in response to the mining industry, the Bush Administration delayed implementation of the interim rule for one year and now has stayed implementation of the final rule while it considers a further five-year delay.⁶

Inspector General finds improper no-bid contracts. David Lauriski resigned in November 2004, shortly after an Inspector General report confirmed that MSHA had wrongfully awarded single-source, no-bid contracts. Two companies involved had alleged ties to Lauriski and his two top deputies, John Correll and John Caylor. One of these contracts, totaling \$200,000 for educational training, had been recorded at MSHA as just 180 small contracts for \$1,025 each.⁷

Investigation cut short and citations reduced. In October 2000, a coal sludge spill at a site owned by Martin County Coal, a subsidiary of Massey Energy, dumped 300 million gallons of toxic waste into waterways in Kentucky and West Virginia. An MSHA investigation got underway. As the Bush Administration took office in January 2001, MSHA changed the investigation team's leadership and cut short the investigation. While investigators wanted to interview 25 more witnesses, they were allowed only 6. And while the investigators had drafted eight major citations against the company, MSHA higher-ups reduced them to just two.⁸

Allegations of retaliation against whistleblowers. The long-time mine safety expert at

MSHA, Jack Spadaro, who blew the whistle on the no-bid contracts and on MSHA’s handling of the investigation of Massey Energy’s 2000 Martin County Coal sludge spill was at first threatened with firing and later demoted and transferred by MSHA.⁹

Requests to transfer aggressive inspectors. In May 2002, three MSHA inspectors were transferred after complaints from Murray Energy that they were being too harsh on its Maple Creek mine. Murray President Bob Murray then met with MSHA officials in September 2002 to complain about MSHA inspectors at his Powhatan No. 6 Mine. Both mines had injury rates twice the national average. According to notes of the meeting reported in the press, Murray bragged that his earlier complaints resulted in an MSHA supervisor “riding a desk somewhere.” Also according to the notes, Murray said that MSHA’s Morgantown district manager Tim Thompson would be “in his sights.” Thompson was soon transferred. One of the MSHA law enforcement personnel transferred after the Maple Creek complaints was Kevin Stricklin, a mining engineer credited with helping plan the successful rescue at the Quecreek mine disaster.¹⁰

Industry representation at the mine safety and health review commission

The Federal Mine Safety and Health Review Commission is an adjudicatory body that decides disputes under the Mine Act. It is a five-panel body typically comprised of three members from the President’s party and two members from the other party. As **Table 2** shows, as with other top slots at MSHA, the Bush Administration has appointed industry insiders to the Commission.

Table 2. Background of Current Federal Mine Safety and Health Review Commissioners

Name	Position at FMSHRC	Prior Experience
Michael F. Duffy	Chairman	Deputy General Counsel for the National Mining Association
Stanley Suboleski	Commissioner	Top executive at Massey Energy, a company with one of the worst safety records in the industry
Michael G. Young	Commissioner	Director of regulatory affairs for the Pennsylvania Coal Association
Mary Lucille Jordan	Commissioner	Appointed by Clinton to the Commission, no prior industry connections, served as attorney to miners’ union
Vacant	Vacant	Vacant

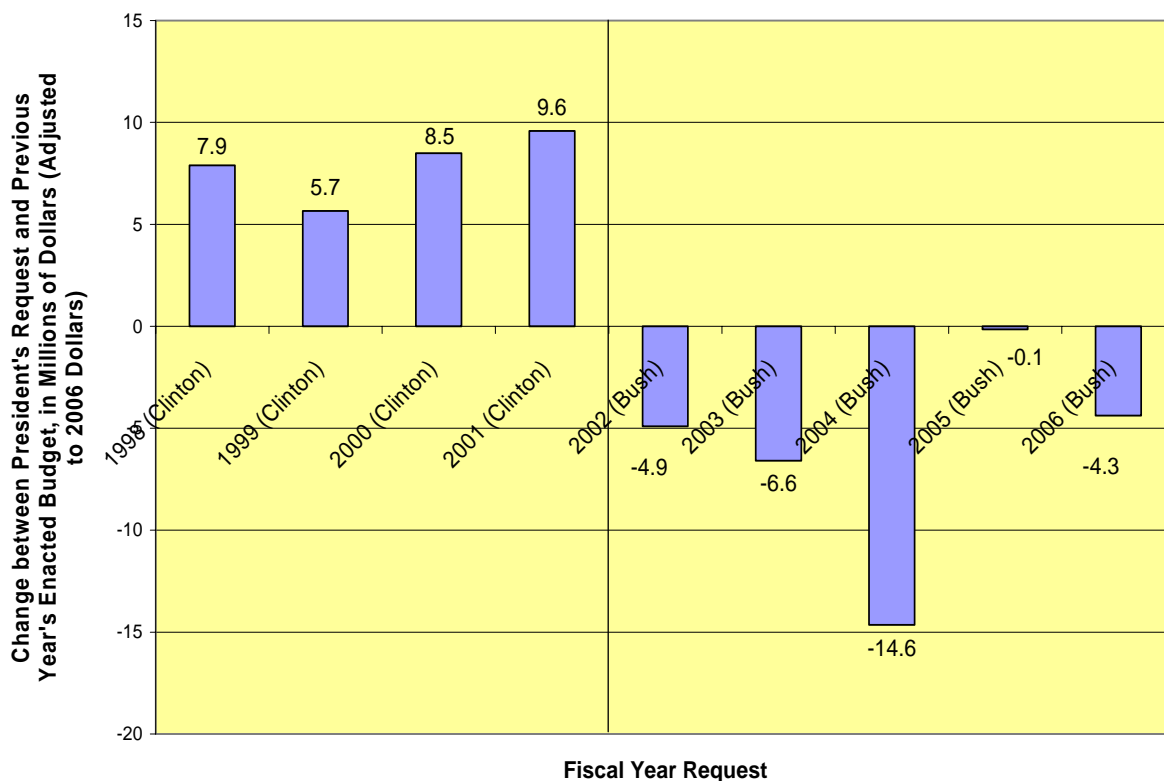
Underfunding and understaffing at MSHA

“We have no protection for our workers. We need to get the United Mine Workers back in these coal mines to protect [against] these safety violations, to protect the workers ...”

- John Bennett, son of a miner killed at Sago, NBC’s Today Show, January 4, 2006

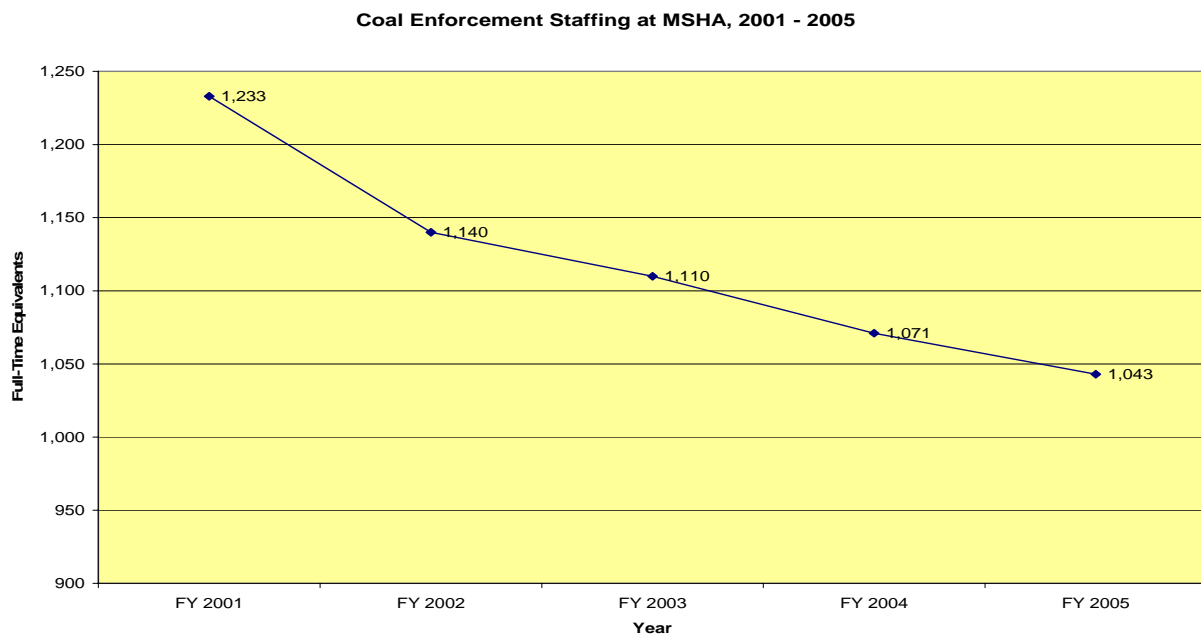
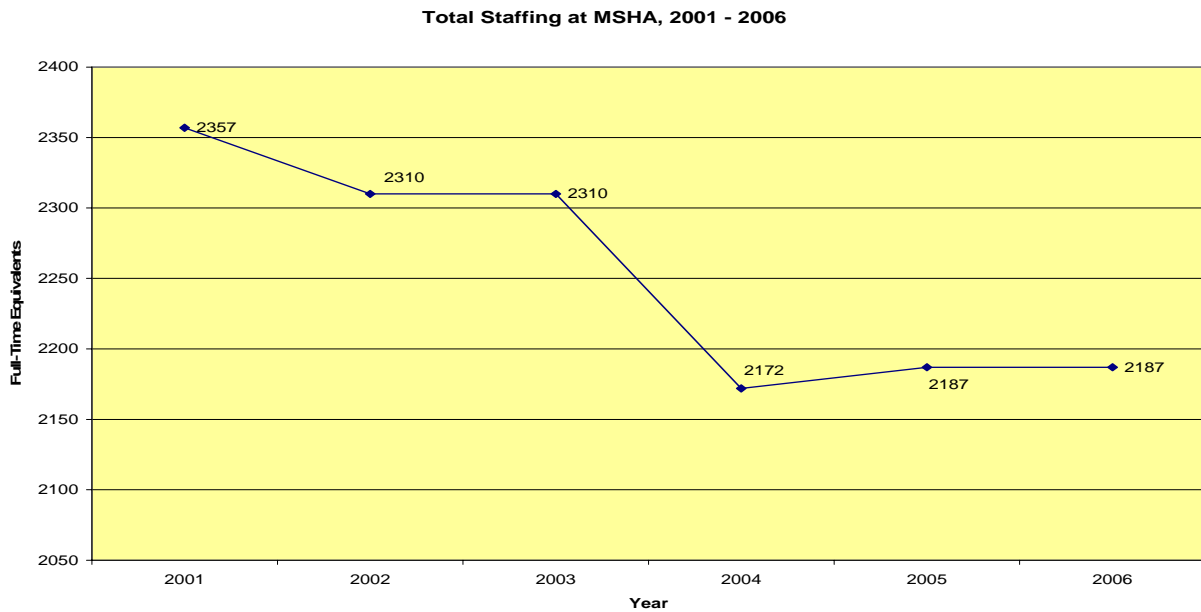
From the outset, the Bush Administration has underfunded and understaffed MSHA. In its first budget request, the Bush Administration failed to request any increase in MSHA funding for FY 2002 over the previous year, resulting in a \$4.9 million cut in real-dollar terms. As **Figure 1** shows, in every budget since 2001, when adjusted for inflation, President Bush requested cuts in MSHA’s funding from the previous year’s enacted budget. The Congress actually provided increases over the President’s request for every year but FY 2006. Most recently, in FY 2006, the Bush Administration requested \$280.5 million. While in nominal terms the FY 2006 budget was an increase over the FY 2005’s \$279 million, in real-dollar terms, it amounted to more than a \$4 million cut to MSHA’s budget for 2006. The President has proposed straight cuts to the coal enforcement budget, even without adjusting for inflation, in every year of his Administration thus far, with the exception of FY 2006.

Requested Change in MSHA's Budget in Real Dollar Terms, 1998-2006



Source: DOL Budget Requests, FY 1998 – FY 2006.

Staffing levels at MSHA have been declining since the Bush Administration took office, as **Figure 2** below shows. In its request for FY 2002, the Bush Administration cut 47 Full-Time Equivalent (FTE) positions at the agency. Between FY 2001 and FY 2006, MSHA's staff was cut by 170 FTE's. The number of coal enforcement personnel, in particular, has been reduced by 9 percent during the Bush Administration's tenure thus far, as the division lost 190 FTE's between 2001 and 2005, as **Figure 3** below shows.



Source: Appropriations Conference Reports; DOL Budget Requests, FY 2001 – FY 2006.

The Bush Enforcement Record

“...today the federal Mine Safety and Health Administration (MSHA) is riddled with former coal company executives. The foxes are guarding the henhouse...”

- UMW President Cecil Roberts, January 24, 2006

Does the placement of industry insiders in top positions at MSHA, the new stress on “compliance assistance,” and the underfunding and understaffing of the agency have an impact on the effectiveness of MSHA’s law enforcement? **Table 3** below offers a snapshot of MSHA’s oversight and enforcement efforts since 2001.

Table 3. MSHA Enforcement by the Numbers

Number of major fines (over \$10,000) since 2001	Down 10%
Median amount of proposed major fines since 1/20/01 (inflation-adjusted)	\$27,139
Median amount of proposed major fines 1/1/96 – 1/18/01 (inflation-adjusted)	\$47,913
Change in median amount of proposed major fines (inflation-adjusted) from Clinton Administration to Bush Administration	Down 43%
Maximum penalty available to MSHA	\$60,000
Portion of fines imposed actually collected by MSHA, since 1999	28%
Number of coal mine enforcement staff (FTE’s) since 2001	Down 9%
Number of total staff (FTE’s) at MSHA since 2001	Down 7%
Guilty pleas/convictions in serious criminal cases since 2001	Down 54.8%
Average number of criminal convictions per year, 1997-2000	7.75
Average number of criminal convictions per year, 2001-2005	3.5
Number of mine companies referred by MSHA to Department of Justice for criminal prosecutions in 2000	38
Number of mines referred by MSHA to Department of Justice for criminal prosecutions in 2004	12
Number of maximum fines proposed, 1996 – 2000	118
Number of maximum fines proposed, 2001 – 2005	37*

*Sources: Philadelphia Inquirer, 1/8/2006; USA Today, 1/9/2006; Knight-Ridder, 1/18/2006; Washington Post, 1/8/2006; Appropriations Conference Reports; DOL Budget Requests, FY 2001 – FY 2006; MSHA Data Retrieval System, <http://www.msha.gov/drs/ASP/OtherReports.asp>, accessed 1/26/06. *One fine included was proposed at less than maximum but was later increased to the maximum.*

Penalty assessments at Sago Mine. When the January 2, 2006, blast occurred, the Sago Mine had just finished a calendar year’s worth of citations that represented more than a 200% increase over the last year. During 2005, MSHA had issued 208 citations, orders, and safeguards against the mine. Some 21 of those citations involved the unlawful accumulation of combustible materials, and 96 of these citations were considered “serious and substantial.” A violation is “serious and substantial” if it is “reasonably likely to lead to reasonably serious injury or illness.”

Over the course of the year, however, the average assessment for all of these violations, as of the date of the disaster, was just \$156. All of the assessments added together amounted to less than half of the maximum penalty that could be imposed for a mine safety and health violation.

Table 4 provides critical data on MSHA’s enforcement actions at the Sago and Alma Mines in West Virginia in 2005.

Table 4. Recent Citation History at Sago and Alma Mines, 2005.

	Sago	Aracoma Alma
Total citations, orders, and safeguards issued in 2004	68	117
Total citations, orders, and safeguards issued in 2005	208	94
Change in citations, orders, and safeguards from 2004 to 2005	Up 205%	Down 20%
Total citations in 2005 which were considered “serious and substantial,” i.e., reasonably likely to lead to illness or injury	96	46
Number of MSHA orders in 2005 involving “imminent danger”	17	0
Number of citations in 2005 for accumulation of combustible materials	21	5
Range of fines proposed for accumulation of combustible materials, as of 1/2/06	\$60 - \$247	\$60 - \$723
Total fines assessed in 2005, as of 1/2/06	\$24,374	\$33,399
Average fine assessed per citation in 2005, as of 1/2/06	\$156	\$458
Current mine company revenues for first nine months of 2005	\$466 million	\$1.69 billion

Opening enforcement to political considerations. On April 7, 2004, MSHA issued Procedure Instruction Letter No. I04-V-1 which opens the door to political considerations when it comes to issuing high-dollar citations. Under the new procedure, “when a fatal or serious accident investigation has progressed to the point where proposed draft violations are available,” the team must send all materials, including inspector notes, to MSHA headquarters for review. A conference call then occurs wherein headquarters officials, including the Division of Safety (DOS) and the national Solicitor’s Office, are consulted to determine whether the high-dollar citations should be issued or not. The Letter maintains, “By involving DOS earlier in the accident investigation/enforcement process, enforcement consistency will be enhanced, communications between headquarters and district enforcement personnel will be improved, accident prevention efforts will be better focused, and potential litigation reduced.” The median high-dollar fine at MSHA has decreased by 43% during the first five years of the Bush Administration, compared to the last five years of the Clinton Administration.¹¹

Less safety information available to the public. Annual reports at MSHA reveal a troubling trend toward secrecy. According to *Mine Safety and Health News*, “MSHA denied or partially denied almost half of all FOIA requests during fiscal year 2004, compared with 42 percent in FY 2003 and less than one-third in FY 2002. The most visible trend in the reports was MSHA’s sharply increased use of one exemption to withhold records: Exemption 7(A). MSHA asserted the exemption only 16 times in FY 2003 to deny information to requesters, but that number jumped to 132 times in FY 2004.” The 7(A) Exemption allows government agencies to withhold information the release of which “could reasonably be expected to interfere with enforcement proceedings.”¹² MSHA now simply refuses to release certain records, particularly

mine inspectors' notes. This new policy is a reversal of 28 years of practice at the agency, which had released the notes upon request since the agency's inception.¹³

Regulatory Rollbacks

“MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”

- Bush Administration Unified Agenda

Since January 2001, Bush political appointees at MSHA have **withdrawn or delayed final action on some 18 mine safety rules** (see Appendix). Three of these rules may have had the potential to speed the rescue and increase the chances of survival for the 14 miners killed in the recent West Virginian Sago and Alma Mine disasters. Summarized below are three such safety regulations withdrawn by the Bush Administration.

(1) Mine Rescue Teams (1219-AB20) – (Withdrawn on Sept. 4, 2002). The rule was proposed to encourage underground mine operators to establish two fully trained and equipped mine rescue teams on site. Designed to increase prevention and preparedness, the rule would have provided financial incentives for the mine operator by allowing MSHA to pay-back a percentage of rescue team training and associated costs. The critical importance of increasing the ready availability of mine rescue teams has become apparent since it took more than 5 hours to have mine rescue teams in place at West Virginia’s Sago Mine after the immediate explosion on January 2, 2006.

(2) Safety Standards for Self-Contained Self-Rescuer (SCSR) Devices in Underground Mines (Coal & Metal/Nonmetal) – (Withdrawn on Sept. 24, 2001) Under the Clinton Administration, MSHA posted a notice of proposed rule-making in the Federal Register on July 7, 1999, requesting comments on critical issues such as ‘**Where escape will take longer than 1 hour, should the standard for coal mines be revised to require caches of an adequate number of self-rescue devices (oxygen and breathing devices) to allow all miners to escape to the surface or a safe location?**’ Had such caches been there for the trapped miners at Sago or Alma, there may very well have been more survivors. Under Clinton, this proposed rulemaking also called for manufacturer expiration dates and periodic inspections to ensure fully functioning SCSRs.

(3) Requirements for Approval of Flame Resistant Conveyor Belts – (Withdrawn on July 15, 2002) The proposed rule would have established a new laboratory-scale test that measured flame propagation for conveyor belts used in underground coal mines. A study by the National Institute for Occupational Safety and Health (NIOSH) has highlighted the incredible speed of flame propagation on conveyor belts and its critical role in mine fires. The existing standard only measures burn time and is outdated.

Recommendations for Congress and the Administration

“...we need a commitment to enforce the laws and regulations that are already in place, coupled with systematically reviewing regulations which may have been weakened in practice...”

J. Davitt McAteer, former Assistant Secretary of Labor for Mine Safety and Health under President Clinton, Statement before Senate Appropriations Subcommittee, January 23, 2006

A number of immediate actions must be taken to improve safety and health in the nation’s mines. First, in light of the Bush Administration’s serious neglect of MSHA safety enforcement and policymaking, **Congress must start fulfilling its oversight responsibilities.** Proper oversight requires congressional investigations into the takeover of the regulating agency by the regulated industry, the rollbacks in safety-and-health enhancing regulations in recent years, the promulgation of questionable regulations and policies, and the agency’s actual enforcement of current law. Such investigations must be conducted through formal Committee hearings, and the Committee must not shrink from utilizing its subpoena powers. As has been made abundantly clear, subpoenas are necessary both for documents, given the Bush Administration’s penchant for refusing simple congressional requests for information, and for witnesses, as made evident by Acting Assistant Secretary David Dye’s remarkable decision to leave a Senate oversight hearing despite the Chairman’s request that he stay to answer questions. House Democrats have called for oversight hearings – but none are scheduled so far in the House.

Second, **MSHA itself must act.** It must change its enforcement posture. An emphasis on “compliance assistance” has come at the expense of actual law enforcement. MSHA must aggressively enforce the law. It must exercise its authority under existing statutes and regulations to impose penalties for violations which will deter future lawbreaking. For example, while the Secretary of Labor has proposed that the Congress raise the statutory cap on fines – a cap rarely imposed – she has always had the authority to enhance fines below the cap. Although Congress sets the ceiling, MSHA sets the floor and everything in between. The record at Sago, for instance, reveals an agency hugging the floor. More aggressive penalty assessments can happen right now, even without congressional action.

Third, to ensure that the industry does adopt safer practices and available life-saving technology, **new regulations are needed.** The Congress should compel and facilitate prompt agency action. There is no need to wait for the completion of any of the mine accident investigations. We already know that American miners need and deserve the best life-saving equipment available. Such equipment includes simple tracking and communication devices used in mines in Australia and other countries around the world. It includes strategically placed rescue chambers and caches of self-contained self-rescue units, providing miners with several days of good air, not just one hour as currently required. For example, we recently saw that quick action and 36 hours worth of emergency stores of food, water and oxygen led to the successful rescue of 72 miners trapped by a fire in Canada. U.S. miners deserve nothing less. Abandoned proposals must be revived to improve the availability of mine rescue teams and to set new requirements for testing and approving flame-resistant conveyor belts, as endorsed by the National Institute on Occupational Safety and Health (NIOSH). Such measures are an immediate starting point. Further congressional action undoubtedly will be necessary as

oversight and other investigations move forward.

With tens of thousands of miners at risk today, there is no excuse for delay.

APPENDIX: Selected withdrawn and delayed health and safety rules

- ***Mine Rescue Teams.*** Provide increased number and availability of mine rescue teams
 - Withdrawn on September 4, 2002.
 - Stated Reason: “We have increased the number and improved the quality of the mine rescue teams available to assist miners in life threatening emergencies. MSHA is withdrawing this item and plans to evaluate nonregulatory alternatives.”
- ***Underground Coal Mining: Self-Contained Self-Rescuer (SCSR) Service Life Approval and Training.*** Limit the service life of the devices, address the appropriate inspection of SCSRs and the adequacy of training.
 - Withdrawn on September 24, 2001.
 - Stated Reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Requirements for Approval of Flame Resistant Conveyor Belts*** – Establishes a new laboratory-scale flame test and approval standard for conveyor belts used in underground coal mines; requires mines to purchase improved belts after one year.
 - Withdrawn on July 15, 2002.
 - Stated Reason: “This rulemaking was initiated in 1989 in response to a number, over the prior 12 years, of reportable (i.e., greater than 30 minutes) conveyor belt fires attributable to belt material. Since that time, accident and injury data reflect a decline in the number of these fires. We attribute this decrease in conveyor belt fires to improvements in belt monitoring and maintenance, along with technological advances in conveyor systems. Therefore, in the absence of a need for rulemaking, MSHA is withdrawing the proposed rule.”
- ***Accident Investigation Hearing Procedures.*** Clarify and Codify Accident Investigation Procedures.
 - Withdrawn on August 16, 2001.
 - Stated Reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Occupational Exposure to Coal Mine Dust.*** Lower exposure to such dust. In 1995, NIOSH had recommended the permissible exposure limit (PEL) be cut in half.
 - Withdrawn on September 4, 2002.
 - Stated Reason: “MSHA is currently developing alternatives to issues relating to respirable coal mine dust. Therefore, we are withdrawing this item at this time.”
- ***Air Quality, Chemical Substances, and Respiratory Protection Standards.*** Update 25 year old regulations for exposure to hazardous airborne contaminants, such as lead, cyanide, arsenic benzene, asbestos and other well documented hazards.

- Withdrawn on September 26, 2002.
 - Stated Reason: “MSHA plans to withdraw this item as a result of changes in agency priorities and the possible adverse effects of unfavorable case law on the proposed rule.”
- ***Surface Haulage.*** Update requirements for technology to strengthen protections against two-story high trucks that haul coal.
 - Withdrawn on September 24, 2001.
 - Stated Reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Respirable Crystalline Silica Standard.*** Lower exposure to silica to prevent development of silicosis in some miners.
 - Withdrawn in September 2001.
 - Stated Reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Training and Retraining of Miners.*** Increase Number of Hours of annual refresher training for Mine Supervisors
 - Withdrawn on September 24, 2001.
 - Stated Reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Safety Standard Revisions for Underground Anthracite Mines.*** Provide new safety standards to address the specific conditions of anthracite mining which are significantly different from other types of coal mining.
 - Withdrawn in December 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Metal/Non-Metal Impoundments.*** Address proper design, construction, and other safety issues around water, sediment, and slurry impoundments, the location of which may endanger lives and cause property damage.
 - Withdrawn in December 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***MSHA Focused Inspections.*** Focus inspection resources and procedures on the greatest safety and health needs within each mine.
 - Withdrawn in August 2003.
 - Stated reason: “MSHA has withdrawn this item and will address this issue through non-regulatory means.”

- ***Escapeways and Refuges.*** Revise and clarify a standard to require underground metal/non-metal mines to have at least two separate exits to the surface.
 - Withdrawn September 24, 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Surge and Storage Piles.*** Address gap in regulations that prohibits people from walking on or around surge or storage piles but allows vehicles and equipment to be operated on the piles.
 - Withdrawn September 24, 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Confined Spaces.*** Explore both regulatory and non-regulatory ways to eliminate or reduce hazards associated with confined spaces in mines, including entrapment by shifting piles, falling into materials, and being struck by overhanging materials.
 - Withdrawn August 16, 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Electrical Grounding Standards for Metal and Non-metal Mines.*** Specify the proper equipment grounding, in light of accidents occurring from inadequate and improper grounding of power mining equipment.
 - Withdrawn in December 2001.
 - Stated reason: “MSHA is withdrawing this entry from the Agenda in light of resource constraints and changing safety and health regulatory priorities.”
- ***Determination of Concentration of Respirable Coal Mine Dust*** – Address Concerns About Accurate Sampling and Measurement of Exposure.
 - Delayed since January 2001 through repeated reopening of record. Final action is yet to be determined.
- ***Diesel Particulate Matter*** (1219-AA74) – Exposure for Underground Miners.
 - Delayed in 2002 and again in 2006 through reopening of record and newly proposed amendment to the effective date. Final implementation was required on January 20, 2006, but has been stayed for four months and may ultimately be delayed another five years.

ENDNOTES

1. Remarks of David Lauriski, Northwest Mining Association's 107th Annual Meeting, "GeoDestiny: Resources for the Future," Spokane, Washington, December 7, 2001.
2. "Mining Safety Rules Get an Overhaul," MSNBC, April 12, 2004.
- ³ Ken Ward, "Alma No. 1 Belt that Burned Doubled as Fresh-Air Intake" Charleston Gazette, January 22, 2006; 69 Fed. Reg. 17480.
4. Christopher Drew and Richard A. Oppel, Jr., "Friends in the White House Come to Coal's Aid," New York Times, August 9, 2004.
5. "Not a Proud Legacy; Lauriski Leaves Woeful Record at MSHA," Lexington Herald Leader, November 18, 2004.
- ⁶ Celeste Monforten, "Weight of the Evidence or Wait for the Evidence? Protecting Underground Miners from Diesel Particulate Matter," American Journal of Public Health, Vol. 96, No. 2 (February 2006).
7. Office of the Inspector General, Department of Labor, "Mine Safety and Health Administration Procurements Showed a Pattern of Disregard for Federal and DOL Acquisition Rules and Requirements Report, No. 25-05-001-06-001, October 29, 2004; CBS News Transcripts, "Who is Jack Spadaro? Mining Safety Advocate Blows the Whistle on Investigations Cut Short by Federal Government," 60 Minutes, April 4, 2004.
8. Clara Bingham, "Under Mined: When a flood of toxic mining sludge wreaked havoc in Appalachia, how did the White House respond? By letting the coal company off the hook and firing the whistleblower," Washington Monthly, January 1, 2005.
9. Id.
10. Ken Ward, "MSHA Denies Transfers Were Political," Charleston Gazette, February 23, 2003.
- ¹¹ Seth Borenstein and Linda J. Johnson, "New Analysis Confirms Fines for Safety Violations are Down," Knight Ridder Newspapers, January 18, 2006.
- ¹² Mine Safety and Health News, May 31, 2005.
- ¹³ Mine Safety and Health News, September 19, 2005.