

PROTECTING THE HEALTH AND SAFETY OF AMERICA'S MINE WORKERS

HEARING

BEFORE THE

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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PROTECTING THE HEALTH AND SAFETY OF AMERICA'S MINE WORKERS

Wednesday, March 28, 2007
U.S. House of Representatives
Committee on Education and Labor
Washington, DC

The committee met, pursuant to call, at 10:30 a.m., in Room 2175, Rayburn House Office Building, Hon. George Miller [chairman of the committee] presiding.

Present: Representatives Miller, Kildee, Woolsey, McCarthy, Kucinich, Wu, Holt, Bishop of New York, Altmire, Yarmuth, Hare, Clarke, Shea-Porter, McKeon, Petri, Ehlers, Platts, Wilson, Kline, Kuhl, and Heller.

Staff present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health/Safety Professional; Lynn Dondis, Policy Advisor for Subcommittee on Workforce Protections; Carlos Fenwick, Policy Advisor for Subcommittee on Health, Employment, Labor and Pensions; Michael Gaffin, Staff Assistant, Labor; Peter Galvin, Senior Labor Policy Advisor; Jeffrey Hancuff, Staff Assistant, Labor; Brian Kennedy, General Counsel; Thomas Kiley, Communications Director; Alex Nock, Deputy Staff Director; Joe Novotny, Chief Clerk; Megan O'Reilly, Labor Policy Advisor; Rachel Racusen, Deputy Communications Director; Michele Varnhagen, Labor Policy Director; Mark Zuckerman, Staff Director; Robert Borden, General Counsel; Steve Forde, Communications Director; Ed Gilroy, Director of Workforce Policy; Rob Gregg, Legislative Assistant; Jessica Gross, Deputy Press Secretary; Victor Klatt, Staff Director; Lindsey Mask, Director of Outreach; Jim Paretto, Workforce Policy Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Linda Stevens, Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Professional Staff Member.

Chairman MILLER [presiding]. The Committee on Education and Labor will come to order.

The purpose of this meeting this morning is to conduct a hearing on protecting the health and safety of America's mine workers.

I want to welcome everyone to today's hearing on protecting the health and safety of America's mine workers.

Last year, the country was shocked by the accidents at Sago, Aracoma Alma and Darby mines, which all came in quick succession. In addition to the 19 coal miners killed in those three accidents, another 28 coal miners died on the job last year.

Many, if not most, of these 47 deaths were surely preventable. Had the Mine Safety and Health Administration heeded the warning signs after the accident at Brookwood, Alabama, in 2001, for example, the miners at Sago and Darby might well be alive today.

In 1977, recognizing it lacked the experience and the expertise to deal with the myriad safety and health risks to coal miners in other mines, the Congress established the Mine Safety and Health Administration. The key question we must examine is whether, 30 years after its creation, the agency is adequately meeting the obligations imposed on it by the Mine Safety and Health Act.

The recent record shows the agency has not adequately fulfilled its obligation. Last year, the Democratic staff of this committee issued a report that found numerous problems with MSHA, from the way the Bush administration had stacked it with industry insiders to the agency's failure to use its authority to collect fines from mine operators that break the law.

Under the Bush administration, MSHA has rolled back safety and health rules and has shifted its focus away from enforcing the law toward the so-called voluntary compliance assistance.

When MSHA fails to fulfill its obligation, fails to establish and revise rules for safe and healthful mining in a timely way, fails to ensure that each of the mine operators has a plan that fully implements these rules or fails to enforce these rules with trained inspectors and meaningful sanctions, then miners' lives are put at an unacceptable risk.

This committee will hold additional hearings to give the Bush administration an opportunity to explain its implementation of the Mine Safety and Health Act of 1977 and the MINER Act of 2006, and the committee will be interested to hear the Bush administration's views on the causes of last year's accidents, including a perspective on what else could or should have been done to prevent them.

Of course, MSHA is not the only entity with responsibility for the health and safety of miners. The industry bears the responsibility, too. Mine operators who do not take the safety of their employees seriously should not be allowed to mine coal period.

We know that there are mines, both in this country and abroad, that go above and beyond what is required of them to keep their workers safe, but we also know that there are mine operators who would rather pay their fines than change their behavior. Rather than resist even the most basic safety advances, the growing mining industry should work with us to make every U.S. mine as safe as possible. Sadly, it appears that the culture of change about which we have heard so much has yet to take root.

The states play an important role in mine safety and health, too. Just this year, the state of West Virginia approved the use of five different types of underground chambers that trapped miners can go to get oxygen, food and water while they await rescue.

Had these chambers been installed at Sago, lives may very well have been saved. If these chambers can help miners in West Virginia, then they can help miners in Kentucky, Illinois, Alabama or in other mining states.

Today, we will hear about instances where the states have moved more swiftly than the timeframes set in the MINER Act. We are

going to hear today from loved ones of miners who were killed on the job. We are going to hear from miners' representatives and from the miners themselves.

I cannot emphasize enough how important it is for this committee to hear from these witnesses. They know better than anyone else how important it is for us to get it right. They know better than anyone how critical it is that we do everything in our power to ensure that miners can go home safely at the end of their shifts.

I welcome all of our witnesses, and I thank you for taking your time to educate us today. I promise that this committee will work in a partnership with all of you to improve the safety of America's mines.

With that, I would like to turn and recognize Mr. McKeon, who is the senior Republican of the committee.

Mr. MCKEON. Thank you, Mr. Chairman, and thank you for convening this hearing.

As I look out and see miners and families of miners, it brings back a little memory. My great-grandfather came from Ireland, and they worked in the mines in Pennsylvania. Three of them—I think it was three of them; the story is a little sketchy—died of black lung disease. As bad as things are—there are some tough conditions now—they were a lot worse then.

But I am glad they came over. That is how I ended up in this country.

Mr. Chairman, I want to thank you for convening this hearing, and I welcome today's witnesses. In particular, I would like to thank Ms. Lee and Ms. Hamner for joining us and providing what I expect will be a moving and important personal testimony.

I believe this hearing will build upon the mine safety activities our committee and this Congress undertook last year. I look forward to our continued dialogue, and I think that, as we begin our discussion today, it is important to take a look at where we have gone and, indeed, where we are headed next.

The most prominent mine safety activities this committee engaged in last year occurred when our Workforce Protection Subcommittee held a series of oversight hearings and briefings during which we heard from federal mine safety officials, mine workers, representatives from the mining industry and members of the House.

An initial oversight hearing served to provide a general overview of mine safety and health regulations from the perspective of federal regulators, representatives of the mining industry and those who work in mines, and another hearing gave House members from both parties, including all members of the West Virginia delegation, the opportunity to share their unique perspectives on mine safety, simultaneously, through briefings from federal Mine Health and Safety officials, complemented the information gathered at these hearings.

Aside from these informative hearings, however, our oversight activities actually began months before that. Immediately following last year's tragedy at the Sago mine, our committee brought the U.S. Labor Department to the Hill to detail for members and staff from both parties the events that occurred, the Mine Safety and

Health Administration's planned response and how its investigation should proceed.

Shortly after, we worked with Representative Shelley Moore Capito to successfully request that the department immediately reverse an agency policy that barred public access to factual information under the Freedom of Information Act, such as inspector notes, until a mine safety case had been closed.

Our philosophy on this was simple: Families of miners impacted by the tragedies, Congress and anyone with a stake in the mining industry should have the best and quickest possible access to meaningful facts about this case.

After these months of oversight activities, it became abundantly clear that we needed better mining communications technology, more modern safety practices inside U.S. mines and improved enforcement of current mine safety laws. Each of these needs were addressed comprehensively by the Mine Improvement and New Emergency Response Act, otherwise known as the MINER Act.

The bill passed the Senate without a single vote in opposition, and it enjoyed support from two witnesses before us today, Mr. Roberts from the United Mine Workers of America and Mr. Watzman from the National Mining Association.

I would be remiss if I did not note that because of some partisan wrangling by the party serving in the minority at the time, this measure did not advance to the president's desk as quickly as it should have. In fact, without this wrangling, MSHA's implementation of the MINER Act would be further along than it already is.

Nonetheless, politics aside, I was pleased to stand beside members of both parties, as well as mine workers, their families and industry officials last June to see this landmark bill signed into law.

Today, more than a year after our oversight hearings on the tragedies in West Virginia and Kentucky, we have seen progress. MSHA has met each of its congressionally mandated deadlines to implement the MINER Act, and similarly, labor and industry leaders have been working in good faith to bolster mine safety through available and ever-changing technology.

Just as my colleagues do, I am hopeful that this law can and will be implemented just as quickly as possible, and in the months ahead, just as we demonstrated last year, I am convinced this committee will continue to track this issue closely and fairly with the attention it deserves and with an eye toward all stakeholders.

Mr. Chairman, I will be the first to admit that this is an emotional issue. Having dealt with it as chairman of the committee last year, I know that fact all too well. But I believe—and I think we will see this very clearly today—that our nation's mine workers are better off today than they were a year ago, and it is the collective effort of all stakeholders—employees, workers, academics, consumer advocates and government—that has made it so.

If we allow ourselves to lose sight of this fact, then this hearing will break with the record of action we accomplished last year, and no one's purposes would be served.

Again, I thank you for bringing us together this morning, and I look forward to hearing from each of our witnesses.

[The statement of Mr. McKeon follows:]

Prepared Statement of Hon. Howard P. “Buck” McKeon, Senior Republican Member, Committee on Education and Labor

Mr. Chairman, thank you for convening this hearing. I welcome today’s witnesses, and in particular, I’d like to thank Ms. Lee and Ms. Hamner for joining us and providing what I expect will be moving and important personal testimony. I believe this hearing will build upon the mine safety activities our Committee and this Congress undertook last year. I look forward to our continued dialogue, and I think that as we begin our discussion today, it’s important to take a look at where we’ve been—and, indeed, where we’re headed next.

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Immediately following last year’s tragedy at the Sago Mine, our Committee brought the U.S. Labor Department to the Hill to detail for Members and staff from both parties the events that occurred, the Mine Safety and Health Administration’s planned response, and how its investigation would proceed. Shortly after, we worked with Representative Shelley Moore Capito to successfully request that the Department immediately reverse an agency policy that barred public access to factual information under the Freedom of Information Act, such as inspector notes, until a mine safety case had been closed. Our philosophy on this was simple: Families of miners impacted by the tragedies, Congress, and anyone with a stake in the mining industry should have the best—and quickest—possible access to meaningful facts about this case.

After these months of oversight activities, it became abundantly clear that we needed better mining communications technology, more modern safety practices inside U.S. mines, and improved enforcement of current mine safety laws. And each of these needs were addressed comprehensively by the Mine Improvement and New Emergency Response Act, otherwise known as the MINER Act. The bill passed the Senate without a single vote in opposition, and it enjoyed support from two witnesses before us today: Mr. Roberts from the United Mine Workers of America and Mr. Watzman from the National Mining Association.

I would be remiss if I did not note that because of some partisan wrangling by the party serving in the Minority at the time, this measure did not advance to the President’s desk as quickly as it should have. In fact, without this wrangling, MSHA’s implementation of the MINER Act would be further along than it already is. Nonetheless, politics aside, I was pleased to stand beside Members of both parties, as well as mine workers, their families, and industry officials last June to see this landmark bill signed into law.

Today, more than a year after our oversight hearings on the tragedies in West Virginia and Kentucky, we have seen progress. MSHA has met each of its congressionally-mandated deadlines to implement the MINER Act, and similarly, labor and industry leaders have been working in good faith to bolster mine safety through available—and ever-changing—technology. Just as my colleagues do, I am hopeful that this law can and will be implemented just as quickly as possible. And in the months ahead, just as we demonstrated last year, I’m convinced this Committee will continue to track this issue closely and fairly; with the attention it deserves and with an eye toward all stakeholders.

Mr. Chairman, I’ll be the first to admit that this is an emotional issue. Having dealt with it as Chairman of this Committee last year, I know that fact all too well. But I believe—and I think we’ll see this very clearly today—that our nation’s mine workers are better off today than they were a year ago. And it is the collective effort of all stakeholders—employees, workers, academics, consumer advocates, and government—that has made it so. If we allow ourselves to lose sight of this fact, then this hearing will break with the record of action we established last year, and no one’s purposes would be served. Again, I thank you for bringing us together this morning, and I look forward to hearing from each of our witnesses.

Chairman MILLER. Just so we can get all the partisan wrangling out of the way at the beginning here, I would note that the “partisan wrangling” to which Mr. McKeon referred, which I am proud to be part of, was an attempt to try to strengthen that legislation because of a number of shortfalls that I and others felt that it had.

The second fact of “partisan wrangling” was the refusal by the majority to hear from the families of those who died in the mines. And we said at that time that should we have a reversal of fortune in November that this was a hearing that was owed to these families, and, today, we are delivering on that promise.

Our first witness—

Mr. MCKEON. Mr. Chairman?

Chairman MILLER. Yes?

Mr. MCKEON. If I may just shortly—

Chairman MILLER. This is political wrangling.

Mr. MCKEON. I totally agree with the chairman. He was fighting to do more. I was in a position where we had a bird in the hand. You know, sometimes we pass bills and they die in the Senate. This bill that we did finally sign into law did pass the Senate.

It was the majority’s feeling, and many of the minority members’, that we would have liked to do more. Charlie Norwood, who was subcommittee chairman of the committee, wanted to do more. He has since passed away. I think we could have probably done more, but it would have drug this thing out longer.

This is the first mining safety bill in 20 years, and while we would have liked to do more, I think we should not have partisan wrangling on this, and we really did not have it, normal political wrangling. The chairman just did not want to do more, and hopefully, we will be able to do that in this Congress at this time.

Chairman MILLER. The good news is we are going to give you an opportunity to do more.

Mr. MCKEON. Good.

Chairman MILLER. Melissa Lee is a widow who lost her husband, Jimmy D. Lee, in the Kentucky Darby mine explosion in Harlan, Kentucky. She is the mother of four and has worked as a small-business owner.

Charles Scott Howard is a coal miner from southeastern Kentucky, and he has been a miner since 1979.

Tony Oppegard graduated from Notre Dame and received his law degree at Antioch School of Law. From 1998 to 2001, he worked for the Mine Safety and Health Administration as an adviser to the Assistant Secretary of Labor. From 2001 to 2005, he worked for the Kentucky Department of Mines and Minerals, and he currently works as an attorney representing miners and their family.

Bruce Watzman is a vice president of safety, health and human resources for the National Mining Association. Mr. Watzman holds a Master’s degree in environmental health management and an undergraduate degree in economics and psychology. He has worked for the National Mining Association, as president of the National Coal Association since 1980.

Jim Dean is currently the director of extension and outreach in the College of Engineering and Mineral Resources at West Virginia University. He is currently serving as chairman of the West Virginia Mine Safety Technology Task Force. Mr. Dean graduated

from Fairmont State College and received his Master's degree in mining engineering from West Virginia University.

Chuck Knisell is a fourth-generation coal miner, and he worked at several mines, including Sago mine, before the explosion.

Debbie Hamner is the widow in the Sago mine disaster. Her husband, George "Junior" Hamner, was a miner for 28 years, and she continues to own his cattle farm.

Cecil Edward Roberts, Jr., is a sixth-generation coal miner and has been president of the United Mine Workers of America since 1995. He began working in the mines in 1971, served as vice president from 1982 to 1995 and is the first president in the history of the mine workers to serve three consecutive terms.

Welcome to all of you. We look forward to your testimony.

Any prepared statements that you have will be placed in the record in their entirety. When you start to speak, a green light will go on. You will have 5 minutes, and then a yellow light will go on, and that will suggest that you want to wrap up your testimony so we will have time for questions.

Yes, Mr. McKeon?

Mr. MCKEON. I appreciate the chairman's indulgence.

This does not happen too often, but I have a niece here today—Erin, her husband Joe, and three of their children, Rachel, Natalie and Justin. I just would like to honor them.

Chairman MILLER. Welcome. Welcome. Thank you for being here.

Rachel and Natalie, do you want to come up here and sit behind here? We will make you an honorary member of the staff. Come up here. Come on. You look at us through our eyes down here. Feel free to leave any time you want. You are not a prisoner.

You are, however. [Laughter.]

Welcome, and we look forward to your testimony. Thank you so much for being here.

**STATEMENT OF MELISSA LEE, WIFE OF DECEASED MINER
JIMMY LEE**

Ms. LEE. Thank you, Chairman Miller. It is an honor to be here. I am glad you all invited me.

I am Melissa Lee. I am a widow from the Kentucky Darby explosion, May 20, 2006.

That was the worst day so far of my life. At 3:39 a.m., I received a phone call from Ralph Napier, the owner/operator of the mine, that there had been an explosion and that my husband, along with five other men, was still underground.

I was told to go to a local church near the mines to wait for information about the explosion. The information did not come quick enough. The widows, the wives, were receiving information via telephone from other family members. They were more informed than we were.

Paul Ledford was the only survivor. Paul and Roy Middleton and I graduated high school together in 1988 from Evarts High School. We were all friends.

My husband died doing an occupation that he loved. He loved coal mining. My husband was a high school graduate from Cawood High School. He enjoyed other things outside of mining, but mining was what he wanted to do.

The devastation—I do not consider it an accident; it was a devastation—has caused grief in our family. I have four small boys that I am left raising: Hayden is 14, Brody is 12, Seth is 4, and Ross is 2. And every day these boys miss their father, and I am left to be mother and father. It is difficult.

I closed my business after having it open only 1 year for the fact that someone had to be there with the children and, in the process, somebody has to keep speaking for the miners. These men were not just coal miners. They were husbands, fathers, grandfathers. They were men to be reckoned with.

My husband was partially decapitated. An O₂ tank impaled through his abdomen. My husband had a closed coffin. I was not allowed to see this face that I had for 8½ years of my life.

Jimmy was not just my husband. He was an awesome, awesome man. He had at his memorials or service, his personal memorial—I do not consider it a funeral—over 1,200 people were there—1,200 people. No one could tell me one bad thing about my husband.

He loved what he did, and because of that, there are other miners just like him that deserve the same benefit that my husband was not given. My husband died at the face of the explosion. There was methane there that caused the omega blocks to blow out.

He died instantly, I am told. If he had had his own methane detector, he could have taken his own reading, possibly not doing the job that he was taken to the explosion site to do.

House Bill 207 is not just a bill; it is common sense. The things we are asking to pass are common sense: more inspections, methane detectors, more information and education. These things are not things to be toyed with.

These men who still go underground every day to provide aid and support for their family need to be taken care of. Children need their fathers to come home. Wives need their husbands there. Mothers need to be able to hug their sons.

Roy Middleton was the only son of Nellie and Dan Middleton. I am asking for you all to please take this story to heart. This has to be passed. This has to become a law.

[The statement of Ms. Lee follows:]

Prepared Statement of Melissa Lee, Wife of Deceased Miner Jimmy Lee

I am Melissa Lee, widow of Jimmy D. Lee a miner that died in the May 20th, 2006, Kentucky Darby Mine explosion in Harlan, Kentucky. Jimmy and I have four sons and many broken dreams. We married only after dating a very short time. We were to celebrate our 9th anniversary in 2006, but that did not happen.

I was given a call at 3:39 am and told there had been an explosion and that 6 men were underground. Jimmy being one of the trapped. I was shocked to hear that all his close coworkers were trapped as well. Roy Middleton, Paris Thomas, Bill Petra, Cotton “Amon” Brock and Paul Ledford. I made the trip to the church I was told to go to and there I found my seat to wait.

During the wait, we were told nothing for hours. The update information came from people not even at our waiting spot. Paul Ledford was the first and only to be found alive. All others were dead. I was more than heartbroken.) was beyond numb) was dead myself.

During the next weeks, I was given calls always saying if they could help, or if I or my sons needed anything to not hesitate and contact them. That was a joke. The widows and myself were kept on the low end—NO information given on the explosion, just promises of help. State police were called to stand watch over the area of the questioning of witnesses. I was told by the state troopers that they were to keep us away from the doors and make sure we did not make a scene. WE heart

ripped out, tear stained and drained widows. I was appalled at these choices. We were not a threat, but grief stricken.

I found out later through the autopsy report that my darling husband had sustained blunt force and thermal trauma to his body during the explosion. HE had part of his skull removed, impaled by a oxygen tank and destroyed by heat and soot. He would have never survived. He was asked by his foreman to stay behind to do a job. THAT job took him from his wife, sons and life. I lost my best friend, the one I wanted to grow old with. I was looking forward to having another child with him. He is gone.

The explosion wrecked many, many lives. It has caused to many of us to have to remap our lives. I moved away, closed my new business, relocated my children to different schools they do not like, I have had to make changes in things I should have never had to change.

The bill I worked for and think will save lives of other miners is only one of common sense. It doesn't require much but the want to have safe mining. I have family still underground. Three of these miners have small children just like their cousins who lost their daddy to a terrible devastation. This will keep these men/women safe and never let what has happened in my life happen to other wives and children.

Chairman MILLER. Thank you very much.
Mr. Howard?

STATEMENT OF SCOTT HOWARD, MINER

Mr. HOWARD. My name is Charles Scott Howard. I am a southeastern Kentucky coal miner. I am glad to be here, and I am glad that you are all here to listen to our testimony.

I started working in 1979, in the winter of 1979, in the mines. I have always worked non-union, except the last couple of years I worked for a company that has just a small union. People that work there are in the union.

I have been fired for safety complaints, fired for refusing to do unsafe work. I was fired once for not bolting the place without an ATRS. An ATRS supports the top so you can bolt the places falling in, and I refused to bolt it. So I was terminated from that job, blacklisted in that county.

I went to another county to work, and a few years later, I come back to Harlan County and worked. I was the foreman then. I became a foreman.

When I started in the mines, I saw how foremen manipulated the men. So I decided to become a foreman and try to make it better. But foremen are mistreated, too, in the mines.

I take the air reading and stuff when you start your shift on producing coal. I went in one morning, did not have any ventilation. So I called out, told the superintendent no ventilation. He said, "Well, we will get you some air."

So I went across the section and checked my faces, checked my curtains, make sure I had everything right so that when the air came into the mines that I would get it to the places I need it where they were producing coal.

So I called back out—they never sent me any air—and I told him when he sent me air, I would send him coal out. At 10:30 that day, they asked me how much coal I would run. I said, "I ain't run nothing. You ain't sent me no air." Well, I lost that job.

So I quit bossing.

Where I work now, we have a little old union. It is not much, but it is better than nothing. You have a little authority on safety.

I worked Monday night. I work now, I still work in the mines, and I go to work tomorrow.

Now I do belts and fireboss where I work. I went up to the section. I always go up to the section and see what the men are doing, where they are mining. They know me. They know I am a safety advocate and that I will help them any way I can.

I went up there and they were not running, and I saw some of the guys sitting there. I said, "What are you all doing down there—a safety meeting or something?" They said, "No. We hit gas up here." I said, "What are you doing?"

I had a spotter with me and said, "Come on up here and check it for us." So I went up there and checked. I was up there at the start of the shift, and there was a test hole in the top, and there was not any gas coming out at that time. A scoop man had come down, and he thought he busted a hose on his scoop. He heard it, so he had to find somebody with a detector.

That is why I was pushing for this rule in Kentucky, the House Bill 207, that every coal miner have a detector because, see, this guy, he was running a battery scoop. If he had went on down through there and the battery lid jumped up and come back down and arced on those batteries, he would have been traveling under that hole.

They found 3 to 5 percent methane coming out of it, and when we left that shift, it was still coming out.

I heard somebody say earlier that coal mining has become safer over the years. I have worked 28 years in the mines, and it is not safer from the first day to tomorrow when I go back to work. Laws have been passed to make it safer, but laws do not mean nothing when you go down, when you go to work, when they send you back in the mines.

Outside, safety is first. When you go underground, coal is all that matters. I have had superintendents call underground and holler, "I do not care if you kill every man in there, I want coal on the belt."

I have heard them have problems and want extra men to stay back and try to help produce coal or get to where you can run coal. I have heard them say how many people have to stay back. I have heard them say, "If Jesus Christ is there, you make him stay too."

Coal is all that matters and the coal operator is the only one who has a voice, the only one to educate the miners where I work.

Where I work, I started putting up stuff on safety issues, laws, bills to try to be passed, stuff about this day here. The coal operator comes in, tears it down. So I go to the union, say, "I want to file a grievance." They say, "If you file a grievance, they will take our board down. We would have nothing." I said, "If we do not have a voice, we have nothing anyway."

I would like to just know that the truth is what people know, and to know the truth, you have to come down to where we work and come around some of the little stores and the hollers and find out. Reporters have come. Listen to what they write and say, and you will know the truth, what the miner needs today. And I want to live.

[The statement and addendum of Mr. Howard follows:]

Prepared Statement of Charles Scott Howard, Miner

My name is Charles Scott Howard and as I have said before I am a South Eastern Kentucky Coal Miner. I am not a hillbilly, I am a mountain man forged from an ancestry of hardworking men and women who wake up or did wake up day after day to survive. I was raised to believe not only in God and his Word, but that there is a standard for a man; to work, to take care of family, respect others and to stand up for your rights. I never dreamed of being a coal miner when I was growing up but my family ended up back in Eastern Kentucky when I was in the 7th grade and the best chance of a decent wage was to be a coal miner, but I didn't want to mine coal for I had watched my grandfather suffer from his days in the mines, he lived a bad life because of what the mines did to him and after they pulled him out of the mines it took him about 30 years to die and his quality of life for these years was not much.

In the winter of 1979 I started my career in the coal industry and still mine coal today.

I started working on what they called a Wilcox Section. It consisted of a small miner that was propelled into the coal by two winches mounted on each side and a man would hook a jack onto the end of a rope and wedge the jack between the roof and floor of the mine and the winches would pull the augers into the coal and a conveyor chain would take the coal down the middle of the mine and dump it into another conveyor chain of a bridge connected to the miner and to another bridge and then to a conveyor belt that would continue on in a series of belt lines to the surface. The Wilcox mines were called Man killers for they were a cheap mine made to extract seams of coal as low as 24-25 inches. All the motors on the miners had fans to keep them cool so there was no need for water. On other miners water was needed to cool the motors and the water was then sprayed onto the coal being cut as it left the motors thus suppressing the fine dust made as coal is cut, so that meant that a Wilcox man would breath all this dust for no water was needed. I can remember breathing so much dust that my nostrils would completely stop up with dust and the back of my throat and tongue would be caked with coal dust and you would swallow so much dust your stomach would burn like fire from the sulfur and iron pyrite that filled you up and you would cough and hack till you puked. The dust was so thick that you could not see your partner 4 foot away who would be setting timbers if he had any which was used as a sole means of supporting the roof. Your eyelids would collect so much dust that the grit would keep your eyes red and so sore and when you bathed, the dusts rings around your eyes made you look like you had eyeliner on. With your back against the roof and your hands and knees ambulating you around as you done your duties the loud noise from the miner and bridges, up to 20 decibels, deafened you as you wore out your back and knees. The steel ropes that pulled this monster around that you hoped wouldn't crush you if it decided to walk would splinter and when you had to grab the rope to pull off another length the strands would pierce into your fingers and hands keeping them sore and infected. I remember my mom looking at my hands and crying. I worked on Wilcox sections about 7½ years before I escaped them to a better form of mining but not before receiving my first stages of Black Lung and injuries to my joints and not before seeing many of my fellow workers crippled up and hearing of others being killed in other Wilcox mines in other areas. I thanked God I had escaped this form of mining called man killers with my life.

A solid section was the next kind of mine I worked at. This kind of mining is very old. You simply drill holes into the face of the coal in a certain angle and fill them full of explosives. The explosion forces the coal out into the entries and this is scooped up and taken to a feeder that pours the coal onto a conveyor belt that carries the coal to the surface. After a place is cleaned up of the coal that has been shot down, a bolter comes in and drills holes in the top on four foot centers and places roof bolts into them to support the roof from collapsing. Then the process of drilling starts again. This seems simple doesn't it, but there are things to be done to make this form of mining safe. When a hole is drilled the first stick of powder to be placed in the hole is the cap stick which is a stick of powder with a blasting cap in it. The purpose in this is to ensure that the blasting cap will set off every stick of powder placed in the hole. This was not done because the caps would be ordered with different lengths of wire to ensure they reached the end of the hole to be wired up to detonate. This practice was not done; the operator ordered shorter cap wires because they were cheaper so we had to put the cap in the last stick put into the hole. Usually every stick still went off but you are still gambling on whether they will or not. The last thing to go into the hole was a length of stemming we called dummies. This was done to suppress the flame produced when the explosion was set off. You guessed it right. We didn't use dummies to save cost for the oper-

ator, which I might add was a very small savings. I worked the graveyard shift at that mines and we were sent to this section to work usually without a boss so no air readings or methane checks were made. One day a mine inspector made this section and found 8% methane, this is a very high amount being that 10% provides for the most violent explosion. The operator was forced to buy a cutting machine so that the minimum amount of explosives was used to separate the coal from the seams. I quit this place when I found out the dangers we had been working in and again thanked God for sparing my life again.

Another kind of mines I've worked at used continuous miners. These miners are on track similar to a bulldozer and has a cylinder on one end filled with carbon tipped bits to cut the coal and a scoop type pan that gathers the coal and a conveyor chain carries it thru the middle of this machine and dumps out the other end into a form of haulage that takes the coal to a conveyor belt and then to the surface. This form of mining produces more coal than anything I have ever worked around. It also produces a lot more dust.

I still work at mines that use continuous miners today and I guess I'll finish my career at these kinds of mines.

I could tell you mining stories for hours but I've told these few to try to let you see first hand from a coal miner the issues we face each day in the mines. Safety is a huge responsibility. The industry must be held responsible for they have all the power and authority to see that safety comes first.

Black Lung is still a big problem, compensation is still a big problem and the inspectors and government that regulates mining is a big problem. The problem is the coal industry has put forth too much money to hide the truth.

Roxana, Kentucky.

This testimony is from Charles Scott Howard, a southeastern Kentucky coal miner. This is just a bit more of my story to those who would lend an ear to hear the trouble and turmoil that coal miners face.

They say there are around 300 million people in the United States of America and about 79,000 of those citizens are coal miners, that is surface and underground, and almost 17,000 of those are like myself, Kentucky Coal Miners. Coal produces over half of the electricity in this nation. Electricity is a great service to this country and its people and so few men and women work hard and long hours to bring this natural resource to the people of this nation. The efforts of the coal miner make this great nation strong and keeps Americans comfortable and going even when darkness falls. What the American Coal Miner does for the United States also benefits the world. In the past 2 years the United States has exported around 50 million tons a year to other nations. What a great accomplishment so few citizens of this nation, but not without cost.

During my career, which is not over yet, I have wore out my shoulders, knees and other joints in my body, I have had eye injuries, a broken nose, cuts, strains, sprains, a closed head injury, spinal cord damage and a broken back and my lungs have been filled with coal and rock dust. I have also been poisoned, but I have never missed a shift of work because of these things, except the eye injury. Why you ask, because I work to do for my family and if I were to be a worker to miss over an injury I would be labeled as a liability.

I love my country and my fellow coal mining brother and sisters and I hope this nation would prove to love the small percent of its population. "The Coal Miner," to do such an enormous amount of service to the nation by giving to its coal miners what they deserve. Give back Black Lungs Benefits and Compensation for the worn out miners who literally give their lives for their country.

I hope to share more with you all in the future.

Thank you,

CHARLES "SCOTT" HOWARD.

Chairman MILLER. Thank you.
Mr. Opegard?

STATEMENT OF TONY OPPEGARD, ATTORNEY AT LAW

Mr. OPPEGARD. Thank you for the invitation to speak, Chairman Miller.

Chairman MILLER. Is your mike on?

Mr. OPPEGARD. Thanks for the invitation to speak, Chairman Miller. You truly are the champion of the coal miner in the U.S. Congress, and we appreciate the work you are doing.

I am going to deviate from my prepared remarks.

We have a lot of outlaw coal operators in eastern Kentucky. What Scott is talking about is nothing unusual. It is not an aberration. We have some good operators, but we have a lot of operators that all they care about is getting the coal out and they will do whatever it takes to get it out and disregard the laws.

We have miners working right now as we speak in eastern Kentucky this morning that are working without ventilation curtains being hung. They are working under dangerous roofs. They are working with electric equipment being bridged out that is bypassing the safety features.

It is commonplace, and most of those miners are afraid to complain, although there is a federal law granting them the right to refuse unsafe work, because if they complain, they will be told to get your dinner bucket and go on to the house, which means you are fired. That is exactly what is going to happen to most miners.

I am proud to say I was Scott Howard's attorney in that case he was talking about. He got fired for refusing to bolt when his ATRS would not reach the roof. That is the hydraulic shield that goes up against the mine roof and protects the roof bolt machine operator from roof falls. His ATRS would not reach the roof, he said he would not bolt, and they fired him, and he did get blacklisted.

I am proud to be Melissa Lee's attorney. I am representing four of the Kentucky Darby families as well as the survivor. That was another dog coal mine. There was no reason for those miners to die, other than the fact that they were cutting corners on safety.

The House Bill 207 that Melissa referred to was a law that we just had passed in Kentucky. It was signed by the governor last week. It has a lot of provisions in there that exceed the requirements of the federal law, and those are some of the things we would like to see this Congress pass, some similar provisions.

They are all common-sense provisions that were based on accidents in Kentucky in the last 2 years. They do not do so much in terms of helping miners after a disaster. These are all provisions that help prevent disasters in the first place, help prevent accidents.

So let me go over a couple of them.

The first thing is in Kentucky now, we have six inspections per year. At this time last year, we had two in underground coal mines. In the general assembly last year, we got it up to three. This year, we are up to six, and four of those are complete inspections, two are electrical inspections. For the first time in Kentucky history, we have mandated electrical inspections.

We would like the U.S. Congress to mandate six underground inspections per year in all coal mines in America. If you do nothing else, that is the best thing you could do for coal miners. The more often you have inspectors under ground, the more likely it is that they will see unsafe conditions that could cause an accident, either fatal or serious nonfatal, to try to prevent those accidents from occurring.

We have been stuck on four inspections per year in the United States for the last 30 years. You need to have the will to protect miners, allocate the money to protect miners, go up to bimonthly inspections. It is the best thing that you could do.

Some of the other provisions that we have in the Kentucky law: We are now requiring two METs, mine emergency technicians, on every shift, one of which has to be underground at all times. That stems from an accident in December of 2005 where we had a miner, both of his legs were severed in a mining accident. The MET underground panicked and did not treat him, and he bled to death. Had there been two METs there, even one outside, his life would have been saved.

We had two miners killed in Harlan County in August of 2005 while retreat mining, which is the most dangerous type of mining where you are pulling the pillars that hold up the roof, and we now have in Kentucky a 48-hour notification requirement. Any operator who is pulling pillars has to notify the state enforcement agency within 48 hours that we are going to pull pillars.

The state has to document that in writing, then has to ensure that all miners have been trained on that pillar removal plan, because what we found through the years is that almost all accidents on pillar sections, miners have not been trained in the plan. They are just told to get the coal out however they can.

We also have a requirement now in Kentucky for preshift examinations at all surface mines. It is a basic requirements. The federal law requires preshift examinations for hazardous conditions at underground mines, but not at surface mines. Now in Kentucky, we are the only state that has that requirement for surface mines.

Finally, we have a requirement now or a provision where the state can issue subpoenas to investigate allegations of unsafe working conditions, regardless of whether there has been an accident or an injury. MSHA does not have that subpoena power. As a matter of fact, even if there is a mine disaster like the Kentucky Darby, MSHA does not have subpoena power, unless they convene a public hearing.

MSHA as an agency does not have the will or the guts to hold public hearings to find out why miners were killed. They invite witnesses and then tell them, "You have the right to refuse to answer any questions. You can terminate the interview at any time."

Now in Kentucky, even without an accidents, if we have miners who call and say, you know, "We were required to work under unsafe conditions," the state can subpoena those miners and investigate.

Thank you very much.

[The statement of Mr. Oppegard follows:]

Prepared Statement of Tony Oppegard, Attorney at Law

Thank you to committee for invitation & to Chairman Miller for his commitment to protecting the safety of America's miners; champion of the coal miner in the U.S. Congress—compare to Sen. Paul Wellstone.

Acknowledge UMWA & President Cecil Roberts, who has dedicated his life to making the mines safer for all miners, union & non-union.

Appearing on behalf of Appalachian Citizens Law Center of Prestonsburg, KY; non-profit law office which represents coal miners in safety-related matters.

My background: 27 years working for coal mine safety, particularly o/b/o miners in the non-union mines of eastern KY (not a single union mine—average mining

height of 40-48 inches); 18 years litigating safety discrimination cases under section 105c—miners fired for refusing unsafe work (only attorney in the nation so specializing); 2½ years for MSHA in D.C.—advisor to Davitt McAteer; 4-plus years as mine safety prosecutor for Commonwealth of KY (appointed by Gov. Paul Patton); 2 years private practice, specializing in mine safety litigation; lobbying work for ACLC.

KY General Assembly recently passed HB 207, which the ACLC and the UMWA helped draft and lobbied for—signed last week by Gov. Fletcher.

Common sense safety provisions stemming from specific KY mining accidents.

STILLHOUSE MINING—8/3/05—Harlan County—Russell Cole and Brandon Wilder killed during retreat mining operations (removing pillars holding up the mine roof); investigation showed none of miners trained in pillar removal plan.

HB 207 requires 48-hour notice to state enforcement agency before retreat mining operations begin/resume; state must ensure miners trained on pillar plan—should require inspector to observe retreat mining operations.

H & D MINING—12/30/05—Harlan County—Bud Morris bled to death when legs severed after being run over by a ram car overloaded with coal; mine emergency technician did not treat him underground or outside.

HB 207 requires two METs on each coal-producing shift, one of whom must be underground at all times.

KENTUCKY DARBY—5/20/06—Harlan County—Jimmy Lee and Amon Brock killed in methane explosion at improperly constructed seal; Roy Middleton, Bill Petra & Paris Thomas died of carbon monoxide poisoning.

HB 207 requires operator to provide methane detectors to all outby miners and to any group of two or more miners working together on the section; typically, only the foreman has CH4 detector; will give miners means to protect themselves if foreman not making his gas checks.

Law should have required mine operator to provide CH4 detector for every miner underground—opposed by coal industry lobbyists.

Law should have required mine operator to certify that mine seals built in accordance with seal construction plan—provision deleted entirely when bitterly opposed by industry.

HENDRICKSON EQUIPMENT—7/18/06—Knott County—Jason Mosley, a high wall drill operator, killed when portion of high wall collapsed on his cab.

HB 207 requires pre-shift examinations for hazardous conditions at surface mines (not required in federal law).

HB 207 requires recorded pre-operational checks of all equipment (exceeds requirements of federal law).

HB 207 gives the state enforcement agency subpoena power to investigate allegations of unsafe working conditions even if no accident or injury has occurred (in a glaring weakness of the FMSH Act of 1977, MSHA does not even have subpoena power to investigate a mine disaster or any accident unless it convenes a public hearing; therefore, witnesses are asked to attend interviews, then are told they can refuse to answer any question & can terminate the interview at any time).

HB 207 mandates 6 inspections per year of all underground coal mines, 2 of which must include electrical inspections; last year at this time, KY only mandated 2 underground inspections per year and no electrical inspections; was increased to 3 in the 2006 session of the General Assembly.

Two Final Points

Most important mine safety provision that Congress could enact is requiring six inspections per year of all underground coal mines; if you do nothing else, require bi-monthly inspections of the mines; would substantially reduce the number of fatal and serious non-fatal accidents; stuck on four inspections since 1977 & that is not working (47 coal mine deaths last year, 16 in Kentucky).

With all due respect to Bruce Watzman and other high-paid industry lobbyists, disregard their decades-old mantra that most accidents are caused by the carelessness of coal miners and that what we therefore need is behavior modification programs for coal miners; what we need is behavior modification for mine operators sparked by increased mine inspections and strict enforcement of the Mine Act, not the Bush Administration's fairy-tale emphasis on "compliance assistance" (i.e., asking operators, whom the Administration refers to as its "stakeholders", to please comply with the law).

Will submit more detailed comments in writing.

Chairman MILLER. Thank you.
Mr. Watzman?

**STATEMENT OF BRUCE WATZMAN, VICE PRESIDENT FOR
SAFETY, HEALTH AND HUMAN RESOURCES, NATIONAL MINING
ASSOCIATION**

Mr. WATZMAN. Thank you, Mr. Chairman and members of the committee, for the opportunity to discuss with you what we have done since the tragic events last year and since passage of the MINER Act which NMA supported.

But, first, let me express again to Ms. Lee and Ms. Hammer the condolences of the entire mining industry for their loss and for the other families who have lost loved ones in the mines.

What I would like to discuss today is the progress we have made, but also the work we have left to do so that none of us has to endure this again. As you know, in January 2006, we established the Mine Safety Technology and Training Commission, an independent body to study new technologies, procedures and training techniques that can further enhance safety in our nations underground coal mines.

The commission unanimously adopted 75 recommendations that are both near-term and far-reaching in scope. Many of these were endorsed by the Congress and passed in MINER Act. The recommendations will require us to look at mining differently and to train miners differently. Attached to my written statement is a status report on our review and implementation of the recommendations.

NMA supported passage of the MINER Act. The requirements recognize that good safety practices continually evolve based upon experience and technologic development and that every underground mine presents a unique environment. Since passage of the act, the industry has moved aggressively to identify technology that will enable us to meet the mandates of the act in as short a time-frame as possible.

While more work needs to be done to fully comply with the act's mandates, the industry has, as reflected in the chart attached to my statement and shown on the screens, made significant progress. Seventy-eight thousand new self-contained self-rescuers have been placed into service in the mines, and 100,000 additional will be placed into service in the coming months. Miners have and will continue to receive quarterly training on the donning and use SCSRs.

With the recent approval of expectation training units, all miners will begin to receive training with units that imitate the resistance and heat generation of SCSRs. Mines have installed lifelines in both their primary and secondary escapeways, and emergency tethers have been provided so miners can link together during their escape from the mine.

Underground coal mines have implemented systems to track miners while underground. They have installed redundant communications systems, and new systems to provide post-accident communication continue to be tested. And 36 new mine rescue teams have been added or are in the planning stages, even before MSHA initiate rule-making required by the act, and this number will surely go up.

Even before passage of the act, we began working with MSHA and NIOSH on a mine emergency communication partnership.

Some of these technologies hold great progress. However, they are some years away from readiness for mine deployment. Communication and safety experts agree that underground coal mines present unique challenges to signal propagation. This is only the beginning, just as the MINER Act is not the end, but rather one means of reaching our desired goal to protect our nation's miners.

To that end, we have been compelled to challenge two MSHA actions that are outgrowths of the MINER Act because of our legitimate concerns about the safety consequences that are raised by these regulations.

But we have also taken several voluntary actions. We initiated a review of existing mine rescue procedures and developed the generic mine rescue handbook to help those forming teams and developing mine rescue protocols. We are also developing a protocol for communication with the media during a crisis. The protocol will provide a framework for effective communication and cooperation with MSHA.

Finally, Mr. Chairman, at no time in our recent history has the expertise residing in the mining program at NIOSH been more vital to improving safety. While NIOSH continues to develop and implement important advances in mine safety and health, progress has been slow due to an erosion of research funds, and the situation is now critical.

We look forward to working with the members of this committee and others to ensure that adequate resources required to meet the goals of the MINER Act are available so that every miner can return home safely to their families each and every day.

Thank you for this time. I would be happy to answer any questions.

[The statement of Mr. Watzman follows:]

Prepared Statement of Bruce Watzman, Vice President of Safety and Health, National Mining Association

Good morning. My name is Bruce Watzman, and I am the vice president of safety, health and human resources for the National Mining Association (NMA).

NMA and its member companies appreciate the opportunity to discuss with the committee what the industry has done since the tragic events last year to protect the health and safety of America's mine workers.

Last year's events brought all members of the mining community together behind a single purpose—to ensure that every miner returns home safely to their loved ones each and every day. It is this single purpose that has guided the actions of NMA in establishing the Mine Safety Technology and Training Commission, supporting passage of the MINER Act, promoting industry awareness of the law's new requirements, and striving to find and deploy the new technologies that will improve the protection of underground coal miners.

With that common purpose in mind, I will discuss with you today the findings of the Mine Safety Technology and Training Commission, and what the industry is doing to implement its recommendations; steps the industry has taken thus far to meet the expectations of the MINER Act; and our views on enhancing mine safety research capabilities.

Mine Safety Technology and Training Commission

In January 2006, NMA established the Mine Safety Technology and Training Commission, an independent body, to immediately undertake a study of new technologies, procedures and training techniques that can further enhance safety in the nation's underground coal mines. The commission drew upon the knowledge and experience of mine safety and health professionals from academia, government, industry and the United Mine Workers of America to develop a pro-active blueprint for achieving zero fatalities and zero serious injuries in U.S. underground coal mines. The product of the commission's deliberations is a peer-reviewed report released in

December 2006. The report has been recognized outside the industry as a blueprint to achieve the goal of zero fatalities and accidents. Indeed, your Committee's Interim Staff Report, issued on February 27, 2007, recognized the importance of the commission report to achieve this objective.

The commission unanimously adopted 75 recommendations that are both near-term and far-reaching in scope. Many of the recommendations endorse actions taken by Congress in passing the MINER Act. The commission's recommendations include the areas of communications technology, emergency preparedness, response and rescue procedures, training, and escape and protection strategies. The central theme of the commission's recommendations is a call for a new paradigm for ensuring mine safety—one that focuses on a systematic and comprehensive risk assessment-based approach toward prevention that serves as the foundation from which all safety efforts will flow. This new paradigm will require us to look at mining differently and to train miners differently.

The industry is currently implementing a number of the commission's near-term recommendations and is developing a blueprint for action on the more far-reaching items. For example, we are discussing with NIOSH the development of risk-based management tools and templates to assist the industry in its implementation of the central recommendation of the commission. The use of risk-analysis risk-management, while not a common practice throughout the industry, is familiar to many of the larger companies. Our goal is to create operational tools that will help every company identify and address significant hazards before they create situations that threaten life or property. Attached is a status review of the commission's 75 recommendations, including the steps necessary to implement those recommendations that are longer-term in nature.

We share the commission's view that adoption “* * * of a comprehensive, risk assessment-based approach toward prevention should significantly increase the odds of survival for miners in emergency situations, [and] also provide a guideline for pursuing zero accidents from all sources.” We are mindful, however, that this is a significant undertaking. As Professor Jim Joy, Minerals Industry Health and Safety Center, University of Queensland, has noted in describing the Australian mining industry's experience with implementation of a risk-based approach, [It] “is immense and fraught with stumbling blocks.” Nonetheless, we are committed to the task.

MINER Act

NMA worked toward the passage of the MINER Act. We continue to believe that its core requirements are sound. The requirements, as implemented through Emergency Response Plans, recognize the need for a forward-looking risk assessment, that good safety practices continually evolve based upon experience and technological development, and that every underground coal mine presents a unique environment and what may work in one may not be effective or desirable in another. As the Act's legislative history succinctly states:

The goals of optimizing safety and survivability must be unchanging, but the manner for doing so must be practical and sensible. *S. Rep. No. 109-365* p. 3.

We believe that this passage not only aptly captures the intent of the law, but also serves as a useful reminder to the industry and regulators that there is often more than one way to achieve our singular purpose to improve workplace safety.

In the months following the enactment of the MINER Act, we endeavored to promote industry awareness and understanding of the law's new requirements. Toward that end, NMA, in conjunction with its state association affiliates and in cooperation with federal and state mine safety agencies, conducted six MINER Act Workshops throughout the country. These workshops were designed to assist the industry in preparing their Emergency Response Plans, obtain information on the latest technological developments for communications and tracking systems, and assess mine rescue protocols.

Even before the enactment of the MINER Act, NMA and its members engaged NIOSH and MSHA in a mine emergency communications partnership. The purpose of the partnership is to evaluate current practices and technologies, design performance criteria and protocols for testing, and identify mines where the technologies can be tested. Our members have volunteered their mines for testing tracking and communications systems. Some of these technologies hold great promise; however, they are, in our estimation, some years away from readiness for mine application. Communications and safety experts agree that underground coal mines present unique challenges to radio and wire signal propagation. What works in one mine may not perform in another. As we seek to find and deploy the best systems, we will continue in the meantime to improve conventional systems to provide more reliable means for tracking and communicating with miners underground.

Since passage of the MINER Act the industry has moved aggressively to identify technology that will enable us to meet the mandates of the Act in as short a time-frame as possible. While more work needs to be done to fully comply with the Act's mandates the industry has, as reflected below and in the chart that accompanies this statement, made significant progress. To date:

- 78,000 new self-contained self-rescuers 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 SCSR's.
- 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 escapeways 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 installed redundant communication systems, and new systems to provide post-accident communication continue to be tested.
- 36 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 more than \$160 million for NMA member companies alone.

These numbers simply reflect one quantifiable measurement of the industry's commitment to the MINER Act. And it is only the beginning, just as the MINER Act itself is not the end, but rather one means for reaching our desired goal to protect our nation's miners.

Beyond the actions taken by the industry to comply with federal and state rules we have undertaken several voluntary initiatives that we would like to bring to your attention.

NMA, with the Mine Safety and Health Administration (MSHA) and the National Institute of Occupational Safety and Health (NIOSH), initiated a review of existing mine rescue procedures to determine if existing practices and protocols remain operative given the structural changes that have occurred across the industry. This effort resulted in the development of a generic mine rescue handbook that can serve as a guide for those forming mine rescue teams and developing mine rescue protocols, as well as a review tool for those with established procedures in place. This document has been distributed throughout the mining industry to be used as a pre-event planning template that will expedite the delivery of mine rescue services in an efficient manner, should they be required. It is also readily available to the industry and public on NMA's website at www.nma.org.

Working with the industry's communication specialists, NMA is developing a protocol for communications with the media during a mining crisis. The protocol recognizes the important role of the media in keeping communities informed about the facts surrounding a mining accident or fatality and the obligation of mine operators to contribute to that understanding. The protocol will provide a framework for effective communications and cooperation with MSHA, as envisioned by the MINER Act.

Another challenge we face is the often conflicting regulatory requirements imposed by MSHA and state governments. We do not have the luxury of time to develop one system that complies with MSHA requirements, another for one state and possibly a third or fourth for additional states.

Unfortunately, the underground mining marketplace is not attractive to many technology providers. In the interest of miner safety, it is imperative that we embrace policies that encourage the broadest possible application of technology across all underground coal regions.

Mine Safety Research

At no time in our recent history has the expertise residing at the mining program in NIOSH been more vital to improving mine safety. The elimination of the Bureau of Mines in 1995 was a blow to the longstanding and renowned government leadership in mine safety and health research. The permanent establishment through the MINER Act of the Office of Mine Safety and Health in NIOSH will begin to restore this important function to its former prominence. However, without adequate resources the Office of Mine Safety and Health's leadership in this area will suffer, and the MINER Act's expectation for the acceleration in the pace of research and progress will be frustrated.

While NIOSH continues to develop and implement important advancements in mine safety and health, progress has slowed due to the erosion of research funds, and the situation is becoming critical. Because NIOSH's budget for mine safety and health has remained relatively flat in recent years, its purchasing power continues to decline with the increasing cost of labor, materials and other research costs.

As we consider how to advance the development and introduction of new technology, we urge you to again strengthen this vital government function and ensure funding for NIOSH is commensurate with the role Congress intended under the MINER Act to, "enhance the development of new miner safety technology and technological applications and to expedite the commercial availability and implementation of such technology in mining environments."

Today the industry faces important challenges. More complicated geological conditions, advancements in technology and a new generation of miners require the introduction of new and innovative techniques. Our ability to further advance coal mine safety will require that government and industry continue to harness their collective resources to identify new technologies and practices that eliminate accidents, illnesses and injuries in the workplace. We look forward to working with you to ensure that the resources required to achieve this goal are available so that every miner can return home safely each and every day.

Thank you, and I would be happy to answer any questions.

Chairman MILLER. Thank you very much.
Mr. Dean?

**STATEMENT OF JIM DEAN, DIRECTOR OF EXTENSION AND
OUTREACH, WEST VIRGINIA UNIVERSITY COLLEGE OF ENGI-
NEERING AND MINERAL RESOURCES**

Mr. DEAN. Good morning, Mr. Chairman, members of the committee. Thank you for the invitation to participate in today's hearing and for your ongoing attention to the important topic of protecting the health and safety of America's mine workers.

I am pleased to appear before you today to report on some of the progress that has been made in my native state of West Virginia and what I believe are some of the remaining challenges to the progress of implementing miner protections that were outlined last year.

I currently chair of the West Virginia Mine Safety Technology Task Force. This group is comprised of equal representatives of labor and industry. The purpose of the task force was to determine the commercial availability and operational capabilities of SCSRs, emergency chambers, wireless communication and tracking devices, and also consider issues related to the implementation, compliance and enforcement of the emergency rules defining Senate Bill 247 in West Virginia.

I have attached to my remarks the report from the task force as well as the finalized rules that were recently approved by the legislature this year. These documents, in my opinion, provide the blueprint for enhancing an individual miner's ability to survive an explosion, based on a thorough review of existing technology, a study of past explosions and also coupled with the past practical mining experience by its members.

During the various task force meetings with vendors, it became apparent that the technology to accomplish what everyone wanted either did not exist or needed modification to address important factors. The approach taken was to define standards that were critical in a post-accident situation based on existing technology and focus on a systems approach rather than focusing on a singular device.

One example of these important factors was a 95-degree Fahrenheit apparent temperature requirement set for emergency chambers in West Virginia. This variable takes into account the effect of humidity. This particular value is the point at which a person begins to be exposed to the danger of having a heat stroke. It makes no sense for a surviving miner to enter a life-saving device and then suffer a heat stroke.

These standards were publicized in rule form on June the 9th, 2006. Since then, manufacturers of emergency chambers have made significant changes to their chamber design and construction based on suggestions from the task force as well as their own in-house review. After a two-tiered review process, a total of five chamber manufacturers were approved by the state. Some mine operators have already ordered these units prior to their planned April 15 due date for their chamber plans.

What remains unknown is whether the chambers approved for use in West Virginia will meet MSHA's requirements when they are promulgated.

Based on the first summary report of SCSR inspections issued in October of 2006 in West Virginia, which is attached, there are a total of 10,291 SCSRs reported. State personnel estimate of total of 24,000 to 25,000 units being reported at the close of 2006.

In West Virginia, over \$1 million of state funds have been spent on the West Virginia office of miners health, safety and training's mine rescue team equipment in the past year, with over another million to be spent in the coming months as reported by the director.

The board of Coal Mine Health and Safety last year promulgated emergency rules, which are also attached, creating two new state mine rescue teams and additional improvements in equipment.

Plans for the deployment of tracking and communication systems are due in West Virginia by July 31 of this year. MSHA has verbally indicated in that they do not intend to accept any system yet. We are moving forward in West Virginia and hope that a year or so from now, MSHA does not reject the systems that will soon be deployed in our state.

This past legislative session in West Virginia, with operation from industry, the United Mine Workers of America and governments, attention turned towards accident prevention in the form of Senate Bill 68, which is awaiting the governor's signature, which is also attached.

In summary, this legislation addresses five major areas: a new administrative sanction that gives the director of mines the authority to close an entire mine if the conditions are such that would warrant that; greater review of the use of belt air with the ultimate resolution of this issue tied to the outcome of the recommendations of the National Technical Study Panel convened under the U.S. DOL pursuant to the MINER Act; a section addressing seals; continuing education for mine foremen; and also continuing the task force.

In summary, I believe that in order for the miner protections designed and being implemented by the state of West Virginia to proceed as quickly as possible, there must be cohesiveness and commonality in large part with federal requirements being imple-

mented after these significant state requirements. This might be achieved through MSHA, excepting requirements that have already been implemented and a thorough review of the rationale with which these state requirements were determined.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity to be here today.

[The statement of Mr. Dean follows:]

Prepared Statement of Jim Dean, Director, Extension and Outreach, West Virginia University College of Engineering and Mineral Resources

Good Morning. Mr. Chairman, Members of the Committee: Thank you for the invitation to participate in today's hearing and for your ongoing attention to the important topic of "Protecting the Health and Safety of America's Mine Workers".

I am pleased to appear before you today to report on some of the progress that has been made in my native state of West Virginia and what I believe are some of the remaining challenges to the progress of implementing miner protections that were outlined last year.

Initially, allow me to offer a little bit of background on myself. I have been involved since 1994 in miner training with the West Virginia University's Mining Extension Service. In mid-February 2006, I was asked by Governor Joe Manchin of West Virginia to become the Acting Director of the West Virginia Office of Miners Health Safety and Training. I accepted this position as a way to try and improve miners' safety by working to construct meaningful reform to miners' safety and health after the passage of West Virginia Senate Bill 247 in 2006 which required a number of measures intended to improve post incident miners safety and served until September 21, 2006. I am currently the chairman of the West Virginia Mine Safety Technology Task Force which was formed in late February of 2006.

Most of the requirements set forth on the state level through SB 247 are currently being implemented consistent with state compliance schedules. For instance, plans for emergency shelters are due April 15th and plans for emergency communications and miner tracking devices are due July 31st of this year. Although more effective, through-the-earth communication systems are still in the design stage with limited depth penetration being demonstrated, West Virginia has elected to move forward with existing technologies and components designed to provide enhanced communications during an emergency event.

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.

The Mine Safety Technology Task Force is comprised of three representatives selected by the United Mine Workers of America, three representatives selected by the West Virginia Coal Association, a technical advisor and chaired by the Director (I am currently serving as his designee). The purpose of the Mine Safety Technology Task Force was to determine the commercial availability, functional and operational capabilities of self contained self rescuers (SCSRs), emergency chambers/shelters, wireless communication devices and tracking devices. The Task Force also considered issues related to implementation, compliance and enforcement of the emergency rules further defining West Virginia Senate Bill 247.

In my opinion, this group was able to lay the groundwork for significant, workable improvements in placing SCSR caches, emergency chambers, mine lifelines, wireless communication and tracking devices. The resulting report from the Mine Safety Technology Task Force and the finalized rules, recently approved by the West Virginia Legislature, are attached as Attachment 1 and Attachment 2 respectively. These documents, in my opinion, provide the blueprint for enhancing an individual miner's ability to survive after an explosion based on a thorough review of existing technology and study of past explosions coupled with years of practical mining experience by its members. It also contains a great deal of information on the various mine safety technologies, their limitations and use.

During the various Task Force meetings with technology vendors, it became apparent that the technology to accomplish what everyone wanted either did not exist, or needed modification to address important factors. The approach taken in West Virginia was to define standards that were critical for the survival of a miner in a post accident situation based on the review of existing technology and focusing on a systems approach rather than a singular device. One example of this was the 95 degree Fahrenheit apparent temperature requirement set for emergency chambers.

The apparent temperature takes into account the effect of humidity. The 95 degree value of apparent temperature is the point at which the human body begins to be exposed to the danger of having a heat stroke. It made no sense for a surviving miner to enter a potential life saving device and then only suffer a heat stroke. Similar standards for construction of emergency chambers were also developed and included in the Task Force report and publicized in rule form on June 9, 2006.

Since that time, various existing manufacturers of emergency chambers have made significant modifications to their chamber design and construction based on suggestions from the Task Force, engineering studies, simulations, and in some cases physical testing. These manufacturers' products went through a review by a licensed professional engineer from West Virginia and then went through a separate review by Miners' Health Safety and Training personnel in addition to two other engineering professors from West Virginia University. This second review process was observed by MSHA and NIOSH personnel.

Earlier this month, a total of five chamber manufacturers products with varying capacity models were approved by the State (one subject to confirmation of MSHA approval of a battery powered scrubbing system or substitution of a non-electrical system). Some mine operators have already ordered these units prior to the planned April 15th due date for submittal of their chamber plans. Similarly, plans to comply with the "breathable air" requirements of Section Two of the "MINER Act", which could include shelters/chambers, were filed with the Mine Safety and Health Administration (MSHA) on March 12th. In my opinion, this 10 month turn around time for technology development is exceptional. What remains unknown is whether the chambers approved for use in West Virginia will meet MSHA's requirements when they are promulgated later this year or early next year. In order for the miner protections designed and being implemented by the State of West Virginia, to proceed as quickly as possible there must be cohesiveness and commonality in large part with the federal requirements being implemented after significant state requirements.

The State of West Virginia is estimating that there will be approximately 322 chambers needed in the state of West Virginia. The Director has informed me that he has been told by the shelter manufacturers that they are estimating that the chambers required for West Virginia will be delivered within a year. I believe based on information reviewed by the Mine Safety Technology Task Force, that the chamber market will quickly become segregated into two or three manufacturers, based on factors such as ease of being moved, height requirements, simplicity of use, and other design factors. There may be delays due to the availability of internal components such as regulators, air cylinders, etc. This in combination with what will happen based upon MSHA's requirements or those in other states that require chambers or "safe rooms" will affect commercial availability as demand increases.

Estimates for start up time for chamber manufacturers have varied from a range of 6 to 10 weeks to 10 to 20 weeks to build the first few chambers. Production estimates have also varied considerably from a range of 1 to 2 units per week to 10 to 20 units per week due to plans for outsourcing construction of the unit. Several of the chamber manufacturers are estimating delivery times of 6 to 8 weeks for internal components mentioned previously.

The West Virginia Mine Safety Technology Task Force is planning to meet with representatives from both MSHA and NIOSH to explain its rationale in developing the requirements enacted last year and also try and see what new regulations are being looked at by the entities to develop strategies for implementation in West Virginia and determine technology issues that we should be addressing that they are not. A sub-group of the Task Force is meeting with NIOSH this Friday.

Last year, the state of West Virginia issued a requirement for all mine operators to report the results of their 90-day SCSR inspections. The first reporting period ended July 31 with reports due no later than August 15, 2006. The resulting report is attached as Attachment 3. Of note, the report indicates that a total of 10,291 SCSRs were reported in this first cycle. Analysis for the second reporting period is near completion, but WV Office of Miners Health Safety and Training personnel estimate (data is still be entered) a total of 24-25,000 units being reported or a conservative doubling in number.

In West Virginia over a million dollars of State funds have been spent on West Virginia Office of Miners Health Safety and Training's mine rescue team equipment in the past year, with over another million to be spent in the coming months as reported by the Director. The Board of Coal Mine Safety and Health (comprised of an equal number of labor and industry members, chaired by the Director) last year promulgated emergency rules (see Attachment 4) creating two new "state" mine rescue teams, for a total of four and two separate rescue stations—one for the northern coal fields and one for the southern regions and requiring various equipment

deemed necessary. These new teams are designed to enhance the state's ability to respond to mine rescue activities if that need would ever arise.

Mine rescue deadlines in the "MINER Act" are rapidly approaching. It is estimated that as many as 35 new company sponsored mine rescue teams will be created with additional teams required for smaller operations and more may be required based on travel time. As you know, these provisions are extensive and may have far-reaching effects on mine rescue coverage being provided by state teams such as Kentucky. The MINER Act was intended to enhance the current system but unfortunately it may do just the opposite in the case of Kentucky. It is my hope that MSHA's anticipated proposed regulations will be flexible enough to recognize the successful delivery systems of mine rescue.

Plans for deployment of communication and tracking systems are due in West Virginia by July 31st of this year. MSHA has verbally indicated that they do not intend to accept any system yet. While we know that what we all envisioned, i.e. the ability to remotely pinpoint the location of any miner anywhere in the mine is not available, what is available is better than what is currently deployed. We are moving forward in West Virginia and hope that a year or so from now MSHA does not reject the systems that will soon be deployed in our state at a projected cost of approximately one quarter of a billion dollars.

This past legislative session in WV, with cooperation from the industry, labor, and government, attention turned toward accident prevention and the need to ensure that the tragic accidents experienced last year do not occur in the future. Senate Bill 68 has completed legislative action and is awaiting the Governor's signature (see Attachment 5).

Once again, I am pleased to report on the exceptional level of cooperation among the state, the UMWA and coal operators whose collective efforts resulted in a bill that will further enhance mine safety in West Virginia. This legislation addresses five (5) major areas:

1) A new administrative sanction that gives the Director of Mines the authority to close a mine if the conditions are such that would warrant such action. An imminent danger violation kicks-in the "Pattern" and potential closure of a mine. The current change requires a mine to have a history of repeated S&S violations caused by unwarrantable failure which demonstrates a disregard for miner health or safety;

2) The section on belt air allows existing mines to continue to use belt air provided the director inspects the mine's ventilation system and ventilation equipment and finds the mine meeting the requirements of 30CFR 75.350 (b). New mines will have to petition the director to use belt air to ventilate working sections and the ultimate resolution of this issue is tied to the outcome of the recommendations of the national technical study panel convened under the US DOL pursuant to the MINER Act;

3) The section addressing seals requires "protocols" for the inspection and examination of all seals and sealed areas to be developed by the Board of Coal Mine Health & Safety. It also requires remediation of all Omega seals and establishes a daily exam if not replaced. Certified engineers are required to sign off on new seal design if they meet the "criteria established by the director" and also requires the results of seal examinations to be recorded in a book prescribed by the director;

4) SB 68 also requires continuing education for "underground" mine foreman fire bosses. These provisions include: (a) 8 hrs of continuing education hours; (b) the content of the continuing education program to include a review of all changes in state mining laws and mine safety regulations and other subjects as determined by the Board of Miner Training, Education and Certification; (c) empowering the Board of Miner Training, Education and Certification to approve alternative training programs designed by coal mine operators; (d) providing for indefinite suspension until such individual completes a refresher program; (e) requiring OMHST to make continuing education programs available in regions of the state based on demand for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity; and (f) providing a procedure for out of state mine foreman-fire boss or an individual with a suspended certificate to gain active status by completing a retraining program developed by the Board; and

5) The Mine Safety and Technology Task Force has been codified in state law. The nine member Task Force is charged with exploring new mine safety technologies and related equipment and making recommendations on their use in coal mines.

In summary, I believe that in order for the miner protections designed and being implemented by the State of West Virginia to proceed as quickly as possible there must be cohesiveness and commonality in large part with the federal requirements being implemented after significant state requirements. This might be achieved through MSHA accepting requirements that have already been implemented and a through review of the rationale at which state requirements were determined.

Mr. Chairman, this concludes my prepared remarks. Thank you for the opportunity to be here today. I'd be happy to answer any questions you have.

Chairman MILLER. Thank you.
Mr. Knisell?

STATEMENT OF CHUCK KNISELL, MINER

Mr. KNISELL. Hello, Mr. Chairman, members of the committee. My name is Chuck Knisell. I am a fourth-generation miner from Westover, West Virginia. I presently work at Foundation Coal Company in southwestern Pennsylvania, and I am a member of United Mine Workers of America, Local 2300.

I appreciate this opportunity to appear before the committee as you are discussing what needs to be done to make America's mines safer. I especially appreciate that you are interested in hearing directly from a working coal miner because I think that even though there has been renewed awareness about mine safety over the past year, members of Congress have been hearing a lot from industry and government agencies like Mine Safety and Health Administration, MSHA, but not enough from the miners themselves.

Everyone has heard the saying, "History repeats itself." Through the years, that has held true in the coal industry. Time after time, someone has to die or be seriously injured before the public's attention is captured about the safety conditions in America's coal mines and before laws are written to address and adjust those conditions.

In school, we teach history to students of all ages so that we may prevent it from repeating itself, history. As we sit here today, I believe it is time we take a lesson from our blood-covered mining books and show to all that we can stop this deadly cycle in this nation's mines.

Accidents can be prevented. This is the fact that all of us know that work in the mines and understand. Mother Nature, the conditions in the mine, the geology of the coal seam and many other factors can be difficult to control at times. Every mine is different, just like a fingerprint.

But just because mines are different does not mean that the same laws cannot apply to every mine. They can, whether you are looking at a small operation of maybe 30 men and women or a large operation of a thousand. Some people say that we have to treat smaller operations differently than large ones due to the fact that the money they make and this and that and that and this, but the fact is the small mines get overlooked and are allowed to do whatever they need to do in order to keep operating and make money.

But the effect is that people are being killed in those smaller operations year after year. The message that sends to the miner is that as the price fluctuates of coal, so does the price of miners' lives. The more production, the more death.

At times of higher prices, companies tend to want to produce as much as they possibly can, putting production ahead of safety. This is especially true in smaller mines and mines where there is no union to make them focus on safety. They spend less on safety so that they could put more money in their pockets. Coal miners have seen this over and over again, generation after generation.

This is where MSHA is supposed to come in. The agency is supposed to put a handle on these companies to enforce safety laws and regulations and look out for the miner, not the coal companies. MSHA really is supposed to be the police department of the mining industry. If they were doing their job, then it is reasonable to ask why did the miners at Sago die and all the rest of the miners that died in the past year.

Mr. Chairman, from one of the places I worked before, I got my present job with Sago. I knew some of the men who were lost there. I worked with them, and I understand the conditions that were at that mine. In my opinion, MSHA and the mine operator, the International Coal Group, betrayed those men.

In my opinion, if ICG had put safety in front of production at Sago and addressed the problems they had at this mine, which they had many, and if MSHA had been a strict enforcer of the law, the men we lost there would still be alive today.

Congress took a big step in the right direction last year by passing the new MINER Act. We need to continue that because there is a lot more for us to do to protect the miners, like myself. For one thing, it must be understood that as each year passes, technology advances and the mine safety laws and regulations must advance along with it.

Communication technology has advanced, but we still do not have reliable communications in the mines in the event of a disaster. Technology for tracking miners underground has been around for a long time, and it is still used in other countries, but MSHA has never required it and the operators still never use it in the United States.

Miners should not have to wait for more of us to be killed or injured before the government and to demand these companies do whatever it takes to keep us safe.

Finally, I want to talk about one of the major differences in safety in our coal mines, and that is union representation. My first 3 years working in the mines were spent at non-union mines in West Virginia, including Sago. The other 3 have been at my present mine, Cumberland in Pennsylvania, which is a union mine. The difference is between night and day.

At non-union mines, you have no voice on safety. It is basically do it or leave. I have heard all the talk from non-union operators about how much they care about safety, but let me tell you as a working coal miner that is just a lot of talk, and it really does not mean anything. They really do not care.

The miners just do not have a voice about their working conditions in the non-union mines. I have been there. I know. I have seen it. I have worked through it.

Chairman MILLER. It is getting late, so I am going to ask you if you can wrap up your testimony.

Mr. KNISELL. Okay. I will do that. I am sorry.

Chairman MILLER. Thank you. Thank you.

Mr. KNISELL. Let us see. What do I want to do? How about I just thank you? Thank you. Thank you for hearing me and letting me run over 2 minutes. Thank you.

[The statement of Mr. Knisell follows:]

Prepared Statement of Chuck Knisell, Miner

Mr. Chairman, members of the Committee, my name is Chuck Knisell. I'm a fourth-generation coal miner from Westover, West Virginia. I've been working in the coal mining industry for six years. I currently work at Foundation Coal Company's Cumberland mine in southwestern Pennsylvania, and am a member of the United Mine Workers of America Local Union 2300.

I appreciate this opportunity to appear before the committee as you are discussing what needs to be done to make America's mines safer places to work. I especially appreciate that you are interested in hearing directly from a working coal miner, because I think that even though there has been renewed awareness about mine safety over the last year, members of Congress have been hearing a lot from the industry and the government agencies like the Mine Safety and Health Administration (MSHA), but not enough from the miners themselves.

Everyone has heard the saying that "history repeats itself." Through the years, that has held true in the coal industry. Time after time, someone has had to die or be seriously injured before the public's attention is captured about the safety conditions in America's coal mines, and before laws are written to address and adjust those conditions.

In school, we teach history to students of all ages so that we may prevent it from repeating itself. As we sit here today, I believe it is time we take a lesson from our blood-covered mining history books and show to all that we can act to stop the deadly cycle in our nation's mines.

Accidents can be prevented. This is a fact that all of us who work in the mines know and understand. Mother Nature—the conditions in a mine, the geology of the coal seam, and many other factors—can be difficult to control at times. Every mine is different, just like a fingerprint. But just because mines are different, it does not mean that the same laws cannot be applied to every mine. They can, whether you're talking about a small operation of 30 employees or a big one of a thousand employees.

Some people say that we've got to treat smaller operations differently from large ones. The small mines get overlooked, or are allowed to do whatever they want to do in order to keep operating and make money. But the effect is that people are being killed in those smaller operations year after year.

The message that sends to the coal miner is that as the price of coal fluctuates, so does the price of miners' lives. At times of high prices, companies tend to want to produce as much as they can, putting production ahead of safety. This is especially true in smaller mines and mines where there is no union to make them focus on safety. They spend less on safety so they can put more in their pockets. Coal miners have seen this over and over again, generation after generation.

This is where MSHA is supposed to come in. The agency is supposed to put a hand on these companies to enforce safety laws and regulations and look out for the miner. MSHA really is supposed to be the police department of the mining industry. If they were doing their job, then it's reasonable to ask: why did the miners at Sago die?

Mr. Chairman, one of the places I worked before I got my present job was at Sago. I knew some of the men who were lost there. I worked with them, and I understand the conditions that were in place at that mine. In my opinion, MSHA and the mine's operator, the International Coal Group, betrayed those men. If ICG had put safety in front of production at Sago and addressed the problems they had in that mine, and if MSHA had been a strict enforcer of the law, the men we lost there would still be alive today.

Congress took a big step in the right direction last year by passing the new MINER Act. We need to continue that, because there is still a lot more to do to protect miners. For one thing, it must be understood that as each year passes, technology advances, and the mine safety laws and regulations must advance along with it.

Communications technology has advanced, but we still don't have reliable communications in the mines in the event of a disaster. Technology for tracking miners underground has been around for a long time and is used in other countries, but MSHA has never required it in the United States. Miners shouldn't have to wait for more of us to be killed or injured for our government to demand of companies that they do whatever it takes to keep us safe.

Finally, I want to talk about one of the major differences in safety in our coal mines, and that's union representation. My first three years working in the mines were spent at non-union mines in West Virginia, including Sago. The other three have been at my present mine, the Cumberland mine in Pennsylvania, which is a union mine. The difference is like night and day.

At the non-union mines, you have no voice on safety. It's basically, "do it, or leave." I've heard all the talk from the non-union operators about how much they care about safety, but let me tell you as a working coal miner, that's just a lot of talk that doesn't mean anything in reality. The miners just don't have a voice about their working conditions in non-union mines. I've been there, I know. I've seen it, and I've worked with it.

When someone is working in such a fragile, unstable environment hundreds or thousands of feet below the surface of the earth, that miner should have a voice when it comes to health and safety, and it should be a voice that must be listened to. I have a family that I want to come home to at the end of the day. I have a right to expect that my workplace will be as safe and healthy as it can possibly be, and that I can have a say in how to make it that way.

With a union presence, a miner has that voice. The company has to respect the safety rights we have written into our contract. We also know that a union mine is a productive mine. Statistics bear that out. The company I work for is a good example. Foundation has union mines and non-union mines, but the two most productive underground mines the company has are UMWA mines. They are where our company makes money. Management knows that, and we know that. Why they fight the union organizing at its other mines is beyond me.

Again, I appreciate the opportunity to appear before the committee today. You have a difficult task ahead of you as you work to improve and strengthen our mine safety and health laws. All I ask, as a working miner, is that you continue to hold to the declaration Congress made in the preamble of the 1977 Mine Act, that the "first priority of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner."

We miners believe Congress meant those words when they were written 30 years ago. What we want to know today is, do you still mean them, and what will our government do to make sure they will never be forgotten?

Thank you, and I will be happy to answer any questions I can.

Chairman MILLER. Ms. Hamner?

Your written statement will be included in the record in its entirety.

Mr. DEAN. Okay.

**STATEMENT OF DEBBIE HAMNER, WIFE OF DECEASED MINER
GEORGE "JUNIOR" HAMNER**

Ms. HAMNER. I also want to thank you for inviting me here to speak at this hearing today. I am Debbie Hammer, and this is a picture of my husband, George "Junior" Hammer, who died in the Sago mine disaster.

Junior had been a coal miner for 28 years, we had been married for 32 years, and we have one daughter, Sarah Bailey.

Do you want to come on down? Okay.

Chairman MILLER. Thank you, Sarah, for being here.

Ms. HAMNER. I attended Congressman Miller's forum on miners' health and safety last year in February after the deaths of 47 miners last year in America. I am here today to stress to you that our work is not done.

New and better laws are wonderful, but it is very important that Congress oversees MSHA to ensure the improvements that you intended with the MINER Act are being accomplished. Despite your good intentions, I have to wonder if very little has actually changed. I fear that the miners would fare no better today in explosion than my husband and his coworkers did on January 2, 2006.

The MINER Act required extra air supplies be available. This seems so simple, yet 1 year later, many miners still only have 1 hour. MSHA allows coal operators to be in compliance if additional SCsRs have been ordered.

The MINER Act also required operators to submit emergency response plan. Yet, 1 year later, many operators are not in compliance.

I believe Sago was preventable. If I knew then what I know today, I would have begged my husband not to work at Sago. It is my understanding that in 1969 and again in 1977, Congress mandated explosion-proof seals, yet MSHA approved the use of omega blocks at Sago. Of course, they failed in the explosion.

When I had the opportunity to inspect one of these blocks, I kicked the side. The side crumbled. How can they be explosion-proof? I ask you to permanently ban the use of omega blocks.

MSHA also approved secondary mining, also known as bottom mining, at Sago, even though they said conditions were not favorable. This created heights in many areas that were more than 18 feet. Methane accumulated behind the seals in a greater volume than it would have without the bottom mining. Bottom mining is rare, and I am asking Congress to ban it. My husband wrote in his last note to me and my daughter, "The section is full of smoke and fumes, so we cannot escape."

MSHA approved a ventilation plan at Sago that did not push the air away from the seals. Therefore, when our miners tried to exit through the intake as escapeway, they could not. Miners must have ventilation systems that ensure their best protection in case they need to escape.

Our miners were forced to barricade at the face. My husband also wrote in his note to me, "We do not hear any attempts at drilling or rescue." They took turns pounding on the roof bolts. MSHA trains the miners that if they barricade to do this.

But guess what? MSHA was not on the surface listening. They did not even have the equipment available to listen. I am asking if MSHA is not going to be there to listen, do not train that they will be. Our miners depended on them. They were let down.

Our Sago miners should have been able to walk out. I urge you to see that current communication technology is installed in all the mines, to require tracking devices that can locate miners underground at all times, and require safety chambers in all of our mines.

Congress must ensure funding for mine inspections and mine inspectors. MSHA must quit reducing fines and must do a better job of collecting fines. MSHA must have the ability to shut down mines not in compliance.

My last request to you is please quit allowing coal industry executives to hold high positions within MSHA. We need your continued oversight to ensure look human life never has to take a back seat to corporate profits.

Thank you for your hard work on miners health and safety and your continued hard work.

Congressman Miller, if I might, I would like to introduce two ladies that are here with us today.

Chairman MILLER. Please.

Ms. HAMNER. This is one Wanda Blevins and Betty Riggs. Both these ladies lost their husbands in the Jim Walters mine explosion in September of 2001.

Chairman MILLER. Thank you. Thank you very much for joining us here this morning and being here.

Ms. HAMNER. Thank you.

[The statement of Ms. Hamner follows:]

**Prepared Statement of Deborah Hamner, Wife of Deceased Miner George
"Junior" Hamner**

Good morning. Thank you for inviting me to speak at this hearing today.

I am Deborah Hamner. My husband, George "Junior" Hamner died in the Sago Mine Disaster. He had been a coal miner for about 28 years. Junior was 54 years old. We had been married for 32 years, and have a daughter, Sara Bailey. Junior and I have a farm where he kept cattle. He loved the outdoors.

I attended Congressman Miller's forum on miners' health and safety last year in February.

After the death of 47 miners last year in America, I am here today to stress to you that our work is not done. It is very important that Congress oversees MSHA to ensure the improvements you intended with the "Miner Act of 2006" are being accomplished.

Despite Congress' good intentions, I have to wonder if little has actually changed. I fear that miners would fare no better today in an explosion than my husband and his coworkers did on January 2, 2006.

The "Miner Act" required extra air supplies be available. This seems so simple. Yet one year later, many miners still only have one hour. MSHA allows coal companies to be in compliance if additional SCSRs have been ordered.

The "Miner Act" also required operators to submit emergency response plans. Yet one year later many operators are not in compliance.

I believe Sago was preventable. If I knew then what I know today, I would have begged my husband not to work at Sago. It is my understanding that in 1969 and again in 1977 Congress mandated "explosion proof seals," yet MSHA approved the use of Omega Blocks at Sago. They failed in the explosion. When I had the opportunity to kick one of these blocks, the side crumbled. How can they be explosion proof? I ask you to permanently ban the use of Omega Blocks.

MSHA approved bottom mining at Sago. This created heights in many areas that were more than 18 feet. Methane accumulated behind the seals in a greater volume than it would have without the bottom mining. Bottom mining is rare and I am asking Congress to ban it.

My husband wrote in his last note to me, "the section is full of smoke and fumes so we can't escape." MSHA approved a ventilation plan at Sago that did not course the air away from the seals. Therefore, when our miners tried to exit through the intake escapeway, they could not. Miners must have ventilation systems that ensure their best protection in case they need to escape.

Our Sago miners should have been able to walk out. I urge you to:

- See that current communication technology is installed in all mines;
- Require tracking devices that can locate miners underground at all times; and
- Require safety chambers in all mines.

Congress must ensure funding for mine inspectors and mine inspections. MSHA must quit reducing fines and must do a better job of collecting fines. MSHA must have the ability to shut down mines not in compliance.

Our last request to you is this: please quit allowing coal industry executives to hold high positions within MSHA.

We need your continued oversight to ensure human life never has to take a back seat to corporate profits.

Thank you for your hard work on miners' health and safety and your continued hard work.

Chairman MILLER. Cecil?

**STATEMENT OF CECIL ROBERTS, PRESIDENT, UNITED MINE
WORKERS OF AMERICA**

Mr. ROBERTS. Thank you very much, Mr. Chairman, not only for this hearing today but for your continued fight on behalf of working-class people, particularly last year when you aired such a strong voice for the protection of miners.

And I also want to thank the entire committee for the MINER Act last year. It is true we supported that because it was a good first step in the direction of protecting the nation's coal miners.

I was going to mention Mrs. Riggs and Mrs. Blevins myself. I have known them very well since 2001, and this is David Blevins in front of me. He has become my friend, even though I did not know him when he was alive. Junior Hamner has become my friend, and we have made both of these men honorary members of the United Mine Workers in their death.

I have had the opportunity to work also with Mrs. Riggs, and she has been a strong supporter of mine health and safety.

I want to thank the coal miners who are here today. They traveled from West Virginia and they traveled from Pennsylvania because they, too, are interested in protecting themselves and seeing that they can come home every day to their loved ones.

I am reminded of what John L. Lewis, a great president of Mine Workers, once said in about 1952 before a similar hearing. After a horrific explosion in Illinois that killed over 100 miners, they asked each participant to introduce themselves. He did not say he was the president of the Mine Workers. He just said, "My name is John Lewis, and I represent those miners who are still alive."

So today, as all of us gather here, whether we are members of Congress or members of the union or families grieving and fighting for better laws or coal miners who made their way here today, that is our charge. How can we protect the nation's coal miners?

Many have said that we have been highly critical of this industry and highly critical of MSHA, and that is very true, but I want to say on the record there are many fine men and women at MSHA who work every day fighting to protect coal miners and their lives and make things better and safer. There are many industry representatives and many coal companies that do the right thing.

What we are speaking to is that we make things better for everybody, and that should be the charge of Congress, and that should be the charge of the union. That should be everyone's main concern.

I would hope and I would pray that no one in this room thinks it is all right for any coal miner, whether they are working in a small mine in eastern Kentucky or at the Sago mine in northern West Virginia, or any other miner to go to work today and not know if they have the full protection and support of their government, to come home safely to their families.

In the United States of America, it should be something you could expect to do. You should not fear that you cannot go to work, make a day's earnings for your family and come home without your family thinking that maybe you will not come home. We join with all the families today in this hearing.

But let me just say to you, Mr. Chairman, members of the committee, I invite you, all of you, to look at what Congress did in 1969, and I would remind this panel that Congress determined in 1969 that this industry was incapable of policing itself. Congress has made that determination. You do not have to make it. It has been made many years for you.

Unfortunately, it took a long time for Congress to come to grips with that. Why did they come to grips with that? Well, the nation

watched the mine explode in northern West Virginia in 1968 that killed 78 coal miners, and the nation was appalled when they are sitting in their living rooms in California or New York City or Chicago or in the coal fields of West Virginia, they were appalled and said, "This Congress has to do something. Our government has to do more to protect the nation's coal miners."

They passed the 1969 Coal Mine Health and Safety Act, and then in 1977, they passed another act that strengthened the 1969 act, and I will submit to you that you cannot look at what is going on in this industry today without coming to this conclusion: The intent of Congress that was written into the law has not been the law at the coal mines itself.

You say, "Well, what you talking about?" I would submit to you that Congress said that you cannot ventilate the face with belt air. We do that every day in this nation's coal mines. How do we do that and who gave them the authority? MSHA took from Congress what they had written in the law and changed it. So, today, we ventilate the face with belt air.

If you look at the law, it says that you have to build seals that are explosion-proof. Today, you could go and kick in the seals. Most of the seals in the United States are made out of omega blocks, and they are not explosion-proof.

So I would submit to Congress you have your own little agency that over the years has decided they do not yet to do what you told them to do no. You need oversight of this agency in the worst way.

And I am not speaking to the many fine men or women who go out in these mines every day and the professionals who have been there for many, many years. I am talking about the people who make the policies that these coal miners, like Chuck Knisell and others, have to be governed by day in and day out, petitions for modifications that change the intent of Congress.

In 1969, Congress knew and directed the government agency in charge of mine health and safety then to come up with systems to put chambers in the coal mines. Now I submit to this body today, it has been a little while since 1969, and here we are today saying, "Gee, this is a good idea. What if MSHA can really get this done for us?" You must put time restraints and bring them in here periodically to say, "What kind of progress are you making here?"

If we can do these things in West Virginia and we can do these things in Illinois, we have to require these in every underground coal mine in the United States of America, Mr. Chairman. That is not an expensive venture. That is not an outrageous demand.

I submitted in our report at Sago that these men should be alive today regardless of the ignition source that caused that explosion, and I believed that then, and I believe that today, and we have attached that to our report.

We would be glad to answer any question from any member of Congress anytime or anyplace or, for that matter, anyone from MSHA with respect to the positions that we have taken.

Thank you, Mr. Chairman.

[The statement of Mr. Roberts follows:]

Prepared Statement of Cecil Roberts, President, United Mine Workers of America

On behalf of the United Mine Workers of America (UMWA or Union), I would like to thank Chairman Miller (D-CA) for calling this hearing before the Education and Labor Committee to continue the discussion about coal mine health and safety. I would especially like to thank Congressman Miller for his steadfast and continuing support of the Nation's miners. Your efforts along with those of the entire West Virginia delegation and others have been instrumental in advancing and protecting miners' health and safety. The MINER Act passed last year, was the first new mine health and safety bill to be enacted by Congress in nearly 30 years. The Union believes that legislation is a good first step, but more must be done if we are to eliminate the conditions that led to the deaths of 47 coal miners last year.

The disasters of 2006 focused the attention of the Nation on the mining industry. Unfortunately, as it has been in the past, it took several mining disasters and the loss of many lives before the Nation understood the dangers miners face daily. The tragic events of 2006, which played out in newspapers and television nationwide, finally forced Congress to take action. This reality is too often the case. Almost without exception health and safety protections miners need are ignored until a mine explosion or fire claims their lives and creates a public outcry for change. The 1969 Coal Act was a response to an explosion in Farmington, West Virginia on November 20, 1968, that took the lives of 78 miners, 19 who still remain entombed in that mine.

While the Coal Act was an improvement for miners, subsequent hearings in Congress showed that hundreds of miners continued to be killed each year in the Nation's coal mines. This reality forced Congress to pass the Federal Mine Safety and Health Act of 1977 (Mine Act). This legislation enhanced protections for coal miners and created the Mine Safety and Health Administration (MSHA) to promulgate and enforce mining laws nationwide.

Since the Coal Act was passed, fatalities in coal mining have decreased dramatically: while over 300 miners died in 1968, the year before the Coal Act was enacted, since 1985 fewer than 100 miners have perished in any single year. These numbers continued to decline until last year when 47 miners died on the job; the highest single year death toll since 1991. While increased mechanization has meant fewer miners are engaged in coal mining, the fatality rate has also dropped significantly. This is commendable; but we can—and must—do much better.

Mining is inherently dangerous and remains the second-most dangerous industry in this country. This nation possesses the knowledge and ability to substantially improve miners' health and safety, and to reduce the fatality rate.

Since its inception some mine operators have resisted the authority of MSHA to regulate the industry. In some instances they have been successful in turning back the clock to the days before passage of the Mine Act. Many of the mandates enacted by Congress in that legislation have been weakened or eliminated. The use of belt-air to ventilate working places where miners are extracting coal was strictly prohibited by Congress, but has been approved by MSHA and is now a common practice in the industry. The requirement for explosion-proof or bulkhead seals to separate working areas of the mine from worked out or abandoned areas is no longer a reality. The industry, through MSHA, has manipulated and subverted the system Congress created to protect miners. The law has been circumvented by MSHA by permitting the use of alternative materials for the building of seals, as was the case at Sago mine, where they catastrophically failed.

Unfortunately, what happened at Sago, Alma, and Darby, three accidents that alone claimed the lives of 19 miners in 2006, should not have come as a surprise to anyone. Indeed, the underground coal industry has experienced tragedies, as well as near tragedies, on a recurring basis. On September 23, 2001—two short weeks after 9-11—at the Jim Walters Resources #5 mine in Alabama there was a terrible series of events that echoed the Twin Towers' experience inasmuch as numerous rescuers also perished during a heroic rescue effort. At the Jim Walters mine, 12 of the 13 miners lost their lives in a second explosion while trying to rescue a miner who had been immobilized by an explosion that happened nearly an hour earlier. Communication problems contributed to the deaths of the 12 rescuers; the rescuers were given insufficient and faulty information about the underground conditions, and unselfishly attempted the rescue without knowing the hazards they faced.

Then in July 2002, 9 miners were trapped by a water inundation at the Quecreek mine in Pennsylvania, after 9 others were able to escape. The trapped miners were rescued 4 days later; again communication inadequacies frustrated their rescue.

After the Jim Walters tragedy, and again after the Quecreek near-disaster, the need for better underground communications was crystal clear. Despite the clear

lessons to be learned from these events, MSHA made no changes to require better communications or technology to locate trapped miners.

In 2006, the coal industry suffered a series of multi-fatal tragedies. A total of 47 miners lost their lives last year, including 12 at the Sago mine and 2 at the Alma mine both in January and both in West Virginia, then 5 more perished at Kentucky's Darby mine in May, and 28 others died one or two at a time throughout the nation. Typically miners die one or two at a time from roof falls, equipment failures, and other accidents.

Thousands of others are still disabled and dying from black lung disease.

There are also countless near-misses that occur on a regular basis. In just the last few years, MSHA has recorded hundreds of mine fires, ignitions, explosions and inundations that far too-easily could have developed into significant disasters and fatalities; many other incidents likely went unreported.

With better regulations, more regular and consistent enforcement, and with support from the highest echelons of the Agency, many of these accidents could have been prevented. Senseless deaths and injuries must stop. Mining will probably always be a dangerous job. But we can do a lot more than we are doing today to make it safer. Miners should not have to get sick, or to risk their lives just by going to work.

The sustained efforts by industry and government to erode the Mine Act has been devastating to miners. Many of the events of 2006 are rooted in regulations, policies, petitions for modification and practices MSHA has instituted at the behest of mine operators. Many of these played a role in the mining deaths of 2006. Once again, miners were forced to wait until many of their fellow workers were killed on the job before the public and Congress were outraged enough to take long overdue action to better protect them.

The United Mine Workers of America has been representing coal miners for over 117 years. We have seen the effects of lax enforcement of mining laws by regulatory agencies and the harm that befalls miners when mine operators view regulations with indifference. These factors played a role in the September 23, 2001 explosions at the Jim Walter #5 Mine (JWR #5) that claimed the lives of 13 miners. The Union completed an investigation into the JWR #5 disaster and issued a comprehensive report, which I have included with my testimony. The Union is convinced that had the recommendations contained in that report been promulgated by MSHA, the disasters of 2006 would not have taken such a toll in human life.

As you may know, the Union recently released its findings regarding the Sago mine disaster. Since the release of our report, which is attached to this testimony, there has been much written about the ignition source of that explosion, and while it is important to make that determination as we believe we have, that must not be the focus of this tragedy. Based on our findings, no matter what the source, there can be no doubt that every one of the 13 miners trapped by the explosion should have survived. However, given the events that led up to this disaster and the decisions made prior to and immediately after it occurred by federal regulators and mine management; 12 of those miners died. This is the unfortunate result of MSHA ignoring the mandates of Congress outlined in the 1969 Coal Act and the 1977 Mine Act and bowing to the wishes of the coal industry. Therefore, while the Union understands the need to enhance miners' protections with new legislation and regulations, we must also correct the errors of the past and force mine operators and the Agency to strictly adhere to the previous orders of Congress. The UMWA believes that many of the protections Congress mandated have been taken away or watered down over the years and only Congressional action will force the necessary corrections to be instituted.

The UMWA concluded that conditions at the Sago mine leading up to the disaster were the direct result of actions taken by MSHA immediately preceding the explosion as well as years of regulations, policies, petitions for modification and practices that weakened miners' protections by the Agency. The Union's report identifies these bad decisions by MSHA and the International Coal Group (ICG) created at Sago mine including:

- Use of alternative seal material;
- Flawed ventilation plan;
- Inadequate oxygen;
- Problems with mine rescue teams;
- Need for more coal mine inspectors;
- Need for tracking devices;
- Need for better communications systems;
- Ineffective training;
- Poor mining plans;
- Lack of seismic equipment;

Delayed response to initial explosion; and
Lack of safety chambers or safe havens.

The Union's report of the Sago disaster demonstrates the failures that occurred on many levels by both industry and the government permitting this tragic accident to take the lives of 12 miners on January 2, 2006. There is no single event that created these conditions. The explosion and loss of life was the culmination of many bad decisions by the mine operator and regulators. To view this otherwise distorts the reality of the situation and restricts our ability to correct these mistakes and oversights to ensure no miner or miners' family will face a similar tragedy.

MSHA knows how to do better. The Agency itself has performed countless internal reviews and self-analyses; the federal government's watchdog agency, the GAO, has given it direction, and the UMWA has communicated both formally and informally about how MSHA can and must do better.

Several years ago, the GAO focused on shortcomings in MSHA's performance with regard to the underground coal industry. The GAO issued its report in September 2003, two years after the Jim Walters tragedy. In its report the GAO noted that MSHA headquarters was not performing adequately in several key areas. Specifically, the GAO found MSHA failed to ensure violations cited to mine operators were corrected in a timely fashion. In fact, the GAO found that of all the citations issued by the Agency, including those written as "significant and substantial," despite inspector-imposed deadlines by which problems were to be abated, 48% of the time the Agency failed to follow-up in a timely fashion to see if the operator fixed the hazards.

The GAO also found that MSHA collected information about accidents and investigations, but then failed to use the information effectively to prevent future accidents. It further found that MSHA failed to ensure that the ventilation and roof control plans are reviewed every six months, even though the Mine Act and applicable regulations, as well as MSHA's long-standing policies, require that these reviews occur on a semi-annual basis.

After MSHA completed its investigation into the Jim Walters disaster, the Agency also performed an Internal Review of MSHA's actions before the explosions to "improve our inspection process to better protect our nation's miners." The review compared what MSHA actually did with what the Mine Act requires it to do. A number of problems were identified as deficiencies "at both the district and headquarters level", deficiencies "relevant to inspection procedures, level of enforcement, plan reviews, the [Alternative Case Resolution Initiative] and accountability programs, supervision and management, and headquarters oversight." The GAO is presently engaged in another review of MSHA's performance and we look forward to learning what it will find.

I would also recommend that Congress review the MSHA Internal Review of its own actions regarding the Pyro explosion of 1989. Many of the deficiencies noted in the 2001 GAO report, the JWR #5 report and the UMWA Sago report sadly parallel in this Internal review completed some 15 years ago.

Just last month, I had the privilege of testifying before the U.S. Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies in an effort to explain to that subcommittee what improvements miners have seen since the passage of the MINER Act. Unfortunately, I had to report to that Subcommittee then, and to this Committee today, that very little has actually changed for rank-and-file miners since January of last year. 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 ago still could not do so today because little progress has been made.

The reasons for this can be traced to several sources including past decisions by MSHA that lessened the protections afforded miners by the 1969 Coal Act and the 1977 Mine Act. As I stated before, MSHA has not moved aggressively to implement all the provisions of the MINER Act. MSHA is seeking to delay requiring certain improvements be implemented until the final dates Congress established rather than moving aggressively forward on these important issues. There appears to be no urgency on the part of MSHA to push for new regulations any sooner. There is also resistance on the part of some segments of the industry to the implementation of new protections for miners. In fact, the National Mining Association (NMA) sued MSHA over the method by which it is requiring operators to provide additional oxygen in coal mines. These problems must be corrected if we are to comply with the mandates of Congress and afford miners greater protections.

The MINER Act includes several important provisions aimed at helping miners after a mine emergency develops. It is most appropriate for you to consider whether the improvements Congress intended to accomplish through that legislation are being realized. The Union supports MSHA's efforts to require substantially more ox-

xygen for every miner. The emergency mine evacuation rule also contains a number of important improvements. Having said that, my testimony will focus attention on areas that MSHA needs to focus its attention to fully implement the MINER Act.

Some of the inadequacies in implementing the MINER Act may be linked to insufficient resources. However, others can be tracked to decisions made by the Agency. In 2001, then Assistant Secretary for Mine Safety and Health, David Lauriski told members of the National Mining Association that MSHA would, “collaborate more with mine operators on regulatory initiatives” and become “less confrontational with mine operators, in an effort to provide companies with better compliance assistance.” At a meeting with mine operators in Hindman, Kentucky, he bragged about his diminutive regulatory agenda. He noted, “if you’ve seen it you noticed its quite a bit shorter than some past agendas.” These policy statements were accompanied by a withdrawal of many proposed regulations by MSHA and a noticeable shift to compliance assistance. These compliance assistance programs diverted precious resources away from enforcement. If history has taught us one thing, it should have taught us that the industry cannot police itself. MSHA must shift its focus from compliance assistance to stronger enforcement. Perhaps most tragically, in many cases, MSHA has ignored the mandates of Congress by adopting regulations and policies that place miners at greater risk.

Mine Inspectors / Mine Inspections

The Agency is experiencing great difficulty in fulfilling the mandatory inspections required under the Mine Act. The Union is convinced that the hiring and training of more MSHA inspectors must be a top and continuing priority. The Agency must have a full complement of properly trained personnel if it is to perform its primary job of enforcing the Mine Act. The ranks of the inspectors have been diminished over the years and we can expect further reductions as more of MSHA’s long-time inspectors leave the profession as they reach retirement age. These needs can only be filled by hiring qualified individuals from all segments of the industry, including rank and file miners. These new inspectors must also be outfitted with state of the art equipment for personal protection and to perform their mandated inspection duties. Sufficient monies must be allocated to ensure this equipment is readily available to these inspectors.

As the number of inspectors have decreased, MSHA’s field office specialists, including ventilation specialists and its electrical and roof control support staff, have been forced to carry out routine mine inspections. These specialists must be returned to their areas of expertise. The only way to accomplish this is to hire an adequate number of inspectors which will permit the specialists to focus on the job they were trained to do. In addition, the Agency must move immediately to train a sufficient number of inspectors to perform these technical tasks in the future.

We certainly appreciate Senator Byrd’s efforts last year to secure to secure \$25.6 million dollars to hire an additional 170 mine inspectors. Congress still must ensure that funding levels at the Mine Academy in Beckley, WV remain sufficient to meet future training needs for mine inspectors. This facility is used to train mine inspectors and also offers comprehensive training for miners and other health and safety experts.

Seals

In 1977 Congress mandated that “explosion proof seals or bulkheads” be used to isolate abandoned or worked out areas of the mine from active workings. However, in the years since, MSHA has promulgated regulations regarding seals that are much less protective than what Congress mandated. The current regulation simply requires that seals withstand static pressure of 20 pounds per square inch (psi) in order to be approved for installation in the mine. The standard was further eroded when MSHA approved the use of alternative seal material including Omega Block type seals, that were used at Sago. These Omega Block seals catastrophically failed as a result of the explosion and contributed to the deaths of all twelve miners.

The UMWA urges MSHA to promulgate a regulation that would require the construction of seals that meet the mandates of Congress and the recommendations in NIOSH’s draft report on mine seals.

Further, the Union recognizes that increasing seal requirements is not sufficiently protective of miners. MSHA must promulgate regulations that force mine operators to monitor the atmospheric conditions that exist in sealed areas of the mine. This monitoring must be done in enough locations behind the seals to effectively demonstrate the conditions that exist in that area at all times. The regulation must also require immediate action be taken by the mine operator when these sealed areas pose a threat to the health and safety of the miners.

Regulations

As I stated previously, under David Lauriski 17 rules and regulations that would have provided health and safety protections to miners were withdrawn. The UMWA believes that MSHA should adopt an aggressive regulatory agenda to address important issues in addition to those contained in the MINER Act, including:

1. Improved Atmospheric Monitoring Systems
2. Develop a Nationwide Emergency Communication System
3. Revise MSHA's Approval and Certification Process for Equipment Approval
4. Occupational Exposure to Coal Mine Dust (lowering exposure limits)
5. Collection of Civil Penalties (mandatory mine closures for non-payment)
6. Air Quality Chemical Substances and Respiratory Protection Standards (update personal exposure limits)
7. Surface Haulage (truck, haul road, train and loadout safety)
8. Respirable Crystalline Silica Standard (reducing quartz standard)
9. Requirements for Approval of Flame Resistant Conveyor Belts
10. Confined Spaces (tight quartered work areas)
11. Training and Retraining of Miners (revision of Part 48)
12. Surge and Storage Piles (dozer/feeder safety surface)
13. Escapeways and Refuges
14. Accident Investigation Hearing Procedures (make them public)
15. Verification of Surface Coal Mine Dust Control Plans
16. Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines
17. Modify Conferencing Process (Appeals of Citations)
18. Underground Coal Mining, Self-Contained Self-Rescuer Service Life Approval and Training.

Recording Fatal Accidents

Several weeks ago MSHA issued new guidelines for determining what constitutes a mine related fatality. The "Fatal Injury Guideline Matrix" narrows the scope of what the Agency will define as a fatal accident, chargeable to the mine operator. This will allow the Agency to report numbers that are artificially low and possibly skew the actual health and safety record of the mine and the industry. In addition, fatalities not listed as mine-related will not get the same scrutiny as a chargeable accident. Without the formal investigation process, lessons learned will not be available to prevent similar events in the future.

The Union also disagrees with the Committee established by the Agency to review deaths where chargeability is in question. The Committee is made up of upper-level MSHA employees and not open to other agencies, organizations or the public. This type of structure does not lend itself to a fair, unbiased review of fatal accidents.

Implementation of the MINER Act

In the MINER Act, Congress mandated timelines for its implementation. In some cases, MSHA has failed to meet these deadlines. The Union urges Congress to allocate adequate funding to MSHA so it can fully implement this Act within the time frames set by Congress. In those instances where a more expedited implementation time is possible, as has been demonstrated in some mining states like West Virginia and Illinois where rules for emergency shelters, emergency communications and tracking devices, mandating SCSR inspections and belt-air issues have been adopted, the Union urges Congress to require MSHA to do so. Miners cannot fully benefit from the protections mandated by Congress unless there is an urgency on the part of MSHA to move forward aggressively with new regulations.

Emergency Mine Evacuation Rule

The Emergency Mine Evacuation Rule, which is separate from the MINER Act but ties into the self-contained self-rescuers (SCSRs) requirements, was finalized and made effective December 8, 2006. However, miners working underground today do not have all the protections that Rule addresses. MSHA deems the operator to be in compliance with the Rule if it has placed an order for additional SCSR. Although the Rule requires increased availability and storage of SCSR, there is a backlog of orders for these life-sustaining units. While the Union is extremely frustrated that more than a year after the Sago and Alma disasters, many miners only have one additional hour of oxygen, in light of this backlog, the Union supports MSHA's approach to make the additional oxygen units equally available to all miners. In reality, it will still take a number of years before miners receive the protections mandated by Congress. Miners cannot wait for another mine disaster to occur to drive new technology, therefore, the Union strongly urges the development and approval of the next generation SCSR. These devices must be positive pressure

units with full face masks and dockable oxygen canisters so that once they are donned it is not necessary to remove them until the miner reaches safety.

The Rule also requires “expectations” training on SCSRs. This would allow miners to experience the actual effects of donning a SCSR and attempting an escape. The practice units would allow miners to experience the breathing restriction and heating that SCSRs create, without risking their safety. While MSHA claims these practice units are not available for purchase, they are in fact available. The reason these devices are not being used by miners today is not availability, it is cost. Many mine operators simply do not want to spend the money to buy them. This is unacceptable and while we commend MSHA for promulgating a rule that is intended to be “technology-driven,” it must now enforce that rule.

Moreover, the finality of this emergency response and evacuation rule is somewhat uncertain because of the lawsuit filed by the NMA. Such legal maneuvers will only serve to delay the protections Congress mandated last year.

Congress understood the importance of requiring that mine operators have comprehensive emergency response plans at all their operations. The MINER Act permitted operators a 60 day period to prepare these plans and submit them to the Agency for review and approval. However, many of the mine emergency response plans that operators submitted were grossly inadequate, and not worthy of approval. We are now over six months beyond the deadline established by Congress. While we commend MSHA for not approving these faulty plans, we do believe it must be more aggressive and apply more pressure on the operators to get these plans completed. Unless MSHA takes decisive action and resolves all the remaining issues, miners will not get the mine emergency response improvements that Congress intended.

Further, the mine emergency response plans are to be reviewed and re-approved by MSHA every six months. We are already six months beyond the original plan due date. If those first plans are not yet approved and fully implemented, how can we expect MSHA to handle these semi-annual reviews? Perhaps MSHA needs more manpower to handle this task, but whatever the answer, until every operation has an approved plan in place, miners are not getting the protections Congress intended.

Communication and Tracking

Very little has changed in the last year concerning the ability to communicate with and locate trapped miners. While we have learned more about this technology and understand that much is available, very few operators have taken advantage of it. Communication systems and tracking devices are areas that MSHA must pursue more aggressively. Current communication and tracking technology, including one-way text messaging and two-way wireless systems, some of which are available now, must be immediately installed in all mines. Any system that can increase the ability for miners to escape a mine emergency, even if it is limited in scope is better than what miners currently have, and must be utilized. The federal government, through NIOSH and MSHA, must fund and direct continued studies and research to develop the next generation of tracking and communication devices. As this newer technology becomes available, mine operators must be required to upgrade existing systems at all its operations.

Mine Rescue Teams

We are also troubled by MSHA’s failure to undertake action to facilitate the creation and training of additional mine rescue teams. Congress in the MINER Act clearly outlined its intent regarding the need for additional mine rescue teams. In addition, the language clearly defines how this is to be applied at both large and small mines. While Congress allowed MSHA 18 months in which to prepare, finalize, and give effect to rules that increase and enhance mine rescue team requirements, so far MSHA has not addressed this need. The need is real, and it is immediate. In the not-too-distant future MSHA will need additional funding to certify that mine rescue teams are qualified, as contemplated by the MINER Act.

Over the past 20 years MSHA and some operators have weakened the intent of the current regulations regarding mine rescue protections. The existing mine rescue team structure is spread too thin. It takes a lot of time and much practice for any mine rescue team to function well. The UMWA has training facilities and is willing to provide mine rescue training and first responder training if we receive the necessary funding. Miners cannot afford to wait any longer for the training of new teams to begin.

Civil Penalties

The Union has completed an initial review of MSHA’s Criteria and Procedures for Proposed Assessment of Civil Penalties: Final Rule, which it issued last week. While the Agency appears to have strengthened its approach toward operators who violate

the law, especially those who are habitual offenders, a comprehensive assessment of the new regulation can only be made after implementation. The Union must see if this rule will be vigorously enforced and if the Agency intends to use the civil penalty regulation to ensure better compliance. Enforcement will be key to its success.

In any event, the Agency must do a better job of tracking and collecting fines once they are imposed. It should also escalate the pressure on mine operators who become delinquent or refuse to pay a final penalty. Finally, to the extent MSHA claims it does not have the authority to suspend mining operations for non-payment of fines, Congress should pass legislation to correct that problem.

MSHA Hotline

The Union has complained for some time that the current hotline system miners use to report hazardous conditions is ineffective. Recently, a member of the UMWA called the 800 number listed on MSHA's website to report a problem at the mine where he worked and was frustrated by problems he encountered. The individual who answered the call, a contract employee, did not have any knowledge of mining, making it extremely difficult for the miner to convey the message. Further, the individual at the call center was not remotely familiar with MSHA's District structure and was therefore uncertain which office should receive the complaint.

The Union has stressed on many occasions that the MSHA hotline should be staffed 24 hours a day, 7 days a week by MSHA personnel with an understanding of the mining industry and the Agency. The Union has recommended that the Agency establish a Mine Emergency Response Office (MERO) to immediately handle problems that occur at mining operations. The current practice of contracting this work out to call centers lessens miners' health and safety.

Belt-Air

In keeping with the mandates of Congress in the 1969 Coal Act, and the 1977 Mine Act, which strictly prohibits the use of belt-air to ventilate working places, the Union has historically been opposed to the use of belt-air to ventilate these areas. The 2006 Alma disaster is a reminder that there is no safe way to ventilate working sections using belt-air. This mine fire was intensified by air from the belt entry, and the contaminated air was dumped onto miners working inby. In addition MSHA must require that conveyor belts used in the mining industry be made of non-flammable material. Extensive research was done since the early 1980's by the government and mining community, but this was another one of the rules withdrawn by Mr. Lauriski.

In the MINER Act, Congress directed that there be created a Technical Study Panel to provide independent scientific and engineering review and recommendations with respect to belt air and belt materials; the Study Panel is then to issue a report to the Secretaries of Labor and Health and Human Services, as well as the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and Labor. While this Technical Study Panel has been constituted and had its first meetings earlier this year, we harbor serious reservations about its administration. Congress was silent as to its administration, but MSHA staff is providing the support personnel. If its first meetings are any indication, MSHA seems more invested in defending the belt air decisions it has already made, than simply servicing the Study Panel. Congress assigned this Study Panel to offer an "independent" review and recommendations, and we hope it can overcome MSHA's bias in favor of belt air.

Funding for Additional Programs and Health and Safety Protections

The Union would urge Congress to adequately fund other agencies and programs that advance the Health and Safety of the nation's miners. These include:

- Pittsburgh Research Center
- Spokane Research Center
- Lake Lynn Facility
- Appalachian Laboratory for Occupational Health and Safety in Morgantown, WV
- Approval and Certification Center
- Personal Dust Monitors (PDM)
- Colorado School of Mines

Conclusion

One year ago, I testified before the Senate Committee on Health, Education, Labor and Pensions to discuss and review the performance of MSHA and the overall state of mine health and safety. That testimony followed the first two disasters of 2006 at the Sago and Alma mines. At that time, I described many of the shortcomings in miners' health and safety.

I am sorry to report that MSHA's efforts over the past year would do little to change matters today if a mine were to experience an explosion like the one at Sago, or a fire like the one at Alma; indeed the underground miners would likely fair no better than those who perished over one year ago. Thanks to the MINER Act, I can presume that any incident would be reported within the initial 15 minutes. However, there is no reason to expect that a sufficient number of mine rescue teams would respond quickly. This is because the last year has seen virtually no progress in either expanding the number or improving the proximity of qualified mine rescue teams.

MSHA still allows mine operators to ventilate working sections with belt-air, and non-flammable belts are still not required. Today there are no requirements that operators provide systems that would enable miners to communicate with the surface or vice versa. There is nothing in place that requires an operator to be able to locate trapped miners, and very few could do so. Safety chambers are not required, nor are safe havens prescribed. Most operators do not have a complete approved emergency response plan as required by the MINER Act. Many miners caught in a disaster would likely have one additional hour of oxygen as opposed to early 2006, but please remember that it took more than 40 hours for the first mine rescue teams to reach the miners at Sago.

We are most appreciative that Congress has worked towards increasing MSHA's budget so more mine inspectors can inspect mines to ensure compliance with the Mine Act. We implore MSHA to demonstrate a similar commitment to enforcing the Mine Act and to improving miners' health and safety so that our industry will never again experience another mine disaster like Sago or Alma. Technology is progressing on a daily basis and the UMWA urges MSHA to require mine operators to employ improvements as they become available.

Miners should no longer have to wait for a tragedy to strike before regulatory agencies and mine operators act responsibly. The blood of miners and the tears of widows and orphans are too high a price for adequate health and safety protections for all miners. The disregard for workers' protections demonstrated by the mining industry and the indifference of the Agency Congress created to protect them can no longer be tolerated. It is time that they are forced to take a proactive approach to protecting miners.

Congress understood prior to 1969 when it passed the Coal Act that the coal industry could not be trusted to police itself, because miners lives would never be considered the top priority by some mine operators. In 1977 Congress reviewed the conditions of miners again and determined it must create a federal agency to enforce the law it had mandated. However, the tragic events of 2006 demonstrated that the Mine Safety and Health Administration has not fulfilled those mandates in many respects. It is time for the Agency to reestablish itself as the advocate for the coal miner. The UMWA believes that only Congressional action will ensure that happens. We cannot wait another 30 years to improve the lives of miners and their families. With the leadership of Congress and the assistance of the UMWA we are certain we will not have to.

It has been said that every health and safety law has been written with the blood of miners. When it wrote the Mine Act, Congress, in its infinite wisdom stated that this Nation's most precious resource is the "miner." This held true then and must hold true today and into the future.

Thank you.

Chairman MILLER. Thank you very much.

And thank you to all of you for your testimony and your contributions here.

I think one of the positive things for me out of these tragic accidents and the loss of the lives of these miners was the opportunity to meet the families and to meet so many members of your community, and in the short time that I spent in Kentucky talking to families and relatives and the members of the community, it was an experience that I will never forget.

So many people from the community said that they wanted to make every effort to see that out of the loss of these lives and lives lost before that the federal government would listen and take action, and it was a compelling experience, certainly on my part.

I want to thank you, Melissa, you and Debbie and others who have spent so much of your time, almost immediately after the loss of your husbands, and other members of your family who have taken their time to really push the state legislatures and the Congress to address this issue in the fashion in which it should have been addressed before.

I want to just publicly thank you so much for all your time and your energy and the work that you have put into the effort, and we will keep that faith and to thank your friends and the members of your community who have supported you in this effort.

I thank you for that.

Mr. Knisell in his testimony—Mr. Dean, I am going to ask you a question here—says, “The Congress took a big step in the right direction last year in passing the new MINER Act,” and I do not think there is any disagreement about that. “We need to continue that because there is still a lot more to do to protect miners. For one thing, it must be understood that as each year passes, technology advances and mine safety laws and regulations must advance along with them.”

I think what we have seen, and what Cecil was pointing out, is that, in many instances, the technology has advanced and we simply have not responded to it. West Virginia seems to have taken this issue by the horns here and decided it is going to move with all speed to take those technologies that have in fact been available—some need to be modified; some need to be advanced—to start to put them in place.

I would just like to know what kind of process that you went through. Then you have expressed several times your concerns of whether you are going to now be second guessed by MSHA and maybe what you have put in place will not be allowed.

Mr. DEAN. Yes, sir. If I could, I mean, this technology task force again was comprised of three members recommended by President Roberts with the United Mine Workers of America, three members representing industry from within West Virginia.

During that time I chaired that particular task force, our process was that whatever recommendations this task force made, which, again, I have submitted for your information, had to be unanimous, and this process went through.

There was a report generated as well as recommendations to the director at that time at the state level—I was the acting director—and essentially based on industry and labor recommendations, we implemented the rules in the state of West Virginia that provided definition around Senate Bill 247, which the legislature passed last year.

That review process, I think, was done in a total of about 36 working days. I mean, these individuals worked very hard and reviewed a lot of written information, met with different technology vendors and, in my opinion, really laid that blueprint forward. Some of that has been changed already by MSHA, some of the rationale, and I think it is very important to go back and take a look at that rationale on SCSRs, chambers.

Again, right now, there are folks that are moving forward in West Virginia with these chambers. I think some of the recommendations made improvements in their products for our min-

ers, and we hope to move forward. I think there is some concern that, you know, they may not be approved when MSHA does whatever rule-making they are going to at whatever time.

Chairman MILLER. Thank you.

If I might, Cecil, quickly, we passed the MINER Act. I think there is a sense that more needs to be done, and I just wondered if you—we will have a second round of questioning—had any suggestions of where some of these gaps might be addressed by the Congress.

Mr. ROBERTS. We, Mr. Chairman, made 18 specific recommendations in our written submission to the panel. I think if I was making some recommendations, I think if you go back and look at the intent of Congress, it required the agency to do certain things, but somehow those things never get done. In—

Chairman MILLER. Yes, but, I mean, according to Mr. Dean here, the fact is it can be done. I mean, this is—

Mr. ROBERTS. There is no question.

Chairman MILLER [continuing]. What drives us all crazy.

Mr. ROBERTS. It has already been done, and it has been done in Illinois, it has been done in West Virginia. It has been done, as my friend Mr. Opegard pointed out, to a certain extent in the state of Kentucky. But it just seems to me like things are supposed to happen at MSHA as directed by Congress and they either come out looking entirely different from my perspective with respect to the intent of Congress where they just do not happen.

The governmental agency was directed, Mr. Chairman, in 1969 by Congress to come up with a plan for the implementation of safety chambers in the nation's coal mines, and here we are today talking about MSHA coming up with a plan for the implementation of safety chambers in the mines. That is 38 years, and that has not happened.

Chairman MILLER. Well, we essentially were told that same information even after these accidents. I mean, that is why I am intrigued with the idea that West Virginia sort of made an executive decision or legislative decision and executive decision that they were going to move forward on those chambers, and yet, even after these accidents, we were told that this was beyond the ability and even though they were used in other parts of the world that this was complicated and the rest of that.

It may be, but, apparently, it is doable, and this may be the first generation of chambers, and we may have improvements down the road, but, at some point, you owe it to the miners to get on with it, and that is my concern here. I think it is a point that Mr. Knisell makes. This has to be a system of continuous improvement and, hopefully, increasing the margins of safety for these workers and their families.

Mr. ROBERTS. I think that gets to my point, Mr. Chairman. I think there needs to be specific deadlines placed on MSHA to do these certain things by Congress, and I think there has to be oversight by Congress to see that those things are accomplished because, without that, it just does not happen.

Chairman MILLER. Thank you.

Mr. McKeon?

Mr. MCKEON. Thank you, Mr. Chairman.

I appreciate the witnesses being here in today. I appreciate your testimony. This has been very enlightening. I was not around here in 1969. I have been around a little longer than 1969.

Mr. Roberts, the point that you make is one of the big frustrations that I feel here in Congress. We hear testimonies like this. I serve on two committees, this committee and the Armed Services Committee, and we pass laws. Then the regulators write regulations trying to interpret what they think we meant when we passed the laws, and then we expect that they will be implemented.

I know I have seen many instances where it just does not happen. I get very, very frustrated by that. I mean, in the Armed Services Committee at one point, we gave direction to the Navy to do a certain thing, and a year later, they came back and basically said, "No, we are not going to do it."

I do not know what you do. You have given a good recommendation. I think time lines would be a good thing to look at. I think oversight, checking some of these things that we have mandated that are not happening, I think that is a very good thing.

It sounds like some states are moving ahead and some are not, but it looks to me like we probably need to go further in the law, but we also need to demand that the laws that were passed in the past are complied with, and I think that the chairman's passion on this issue will make sure that we move on those areas.

Mr. Watzman, our testimony touches on the idea of risk analysis, risk assessment and protocols to managing mines. Now I understand that Australia currently uses this system. Can you explain how this could be implemented in our country, and is this a system that we should be pursuing?

Mr. WATZMAN. Thank you, Congressman.

Yes, you are correct. The Australian system is heavily weighed on risk assessment. What they would tell you is that this has been an evolutionary process. It does not happen overnight. It takes a cultural change, both on the part of the regulatory agencies as well as the industry itself.

We have met with the Australians through the good services of the National Institute of Occupational Safety and Health. We have participated with their experts in them conducting risk assessments at volunteer mines.

What we are focusing on with NIOSH at this point is developing templates and materials that can be shared throughout the industry, to large and small operators alike, so that they can begin the process of undertaking major hazard risk assessment.

In many mines, in many companies, risk assessment is part of the normal process already, whether it is job safety analysis or something along those lines, but the old saying is you must walk before you run, and what we are focusing our attention on first and foremost is providing the tools so that companies can undertake a major hazard risk assessment which, if events do not turn out the way one would like, could be catastrophic in nature.

So we are pursuing that. It is not going to happen overnight. It is going to be a time-consuming process, but it is one that we are dedicated to fulfill.

Mr. MCKEON. Well, it is pretty obvious it is not going to happen overnight. I mean, learning to walk before we can run, it sounds like we are still crawling in many instances, and from 1969 until now, we have not implemented a lot of these things?

I agree the technology is moving forward. The comment was made that some companies are doing very well and some just are not. It seems to me that this crosses all kinds of industry. You know, we have had other hearings.

You know, we have had hearings about unions, and some companies are doing just fine, and then some, no matter what law is passed, they are going to be kind of like Congress. You know, some of us follow the ethics and some do not, you know. Constantly, we are trying to catch the bad apples.

But my view of government is oversight should not be "gotcha." You know, we should not be going out saying, "Oh, boy, you know, we can catch you."

The purpose should be, in what we are working on today, miner safety, okay. Government and the oversight should be working with the miners, with their representatives, with those who are putting up with the problems to make it safer.

Where we have companies that are working on it, fine. I know we should pass them on the back. Those that are not, when we catch them doing things wrong, it should be handled, and if that does not work, they should be shut down. I mean, you know, there just should not be acceptance of rules that were passed, laws that were passed and 1969 not being put into force.

I mean, I am really frustrated with this, and I will be happy to work with the chairman to move forward on this issue. I do not have any tolerance for people that put people's lives in jeopardy and know that they are doing it and do not follow the law.

Chairman MILLER. Thank you.

Mr. Kildee?

Mr. KILDEE. Thank you very much, Mr. Chairman. Thanks for this very important hearing here today.

My family and my city of Flint, Michigan, owe a great deal to UMW, particularly to John L. Lewis, who formed the CIO. My dad joined the CIO back in 1936, and it changed the quality of life in the Kildee household and the quality of life in Michigan. So we are very grateful for UMW.

Mr. Roberts, you mentioned a number of other safety and health problems that need attention that are languishing downtown. Do we need to set legislative deadlines for downtown, and how do we penalize those people who let these things languish and are not carrying out that which Congress has mandated?

This is a very frustrating thing in government. We have to have someone in charge maybe like with at least the zeal of Frances Perkins who really believes in these things.

Mr. ROBERTS. I agree, and thank you very much for those kind comments. I also agree that the CIO was a very good thing, and there is a lot of history at the Mine Workers in Michigan, particularly in the auto industry.

It seems to me one of the things that has come out of the past couple of years—it started in 2001—is that we were promised—and there are family members here who can tell you—by the secretary

of labor that this was not going to happen again, and then 5 years later, it happens again and then it happened again and again and again last year.

I do not think that is a coincidence that these things happen. I think if you go back to 2001, there were 17 rules that were pending at MSHA, and they were all withdrawn in 2001 by Mr. Lauriski when he became the undersecretary of labor.

I think one of the things that has happened here with Congress paying as much attention to mine health and safety as you have over the past year is it, I think you have the attention, quite frankly, of a number of these people in these agencies who now know that the intent of Congress is to protect the coal miners in this nation, and they are concerned about you bringing them up here and sitting them where I am and asking them what is going on and what are you doing to protect the nation's coal miners.

So I guess I would go back to the point, whether it is the secretary of labor, whether it is the undersecretary of labor for MSHA or some individual that is in charge of a particular area of the country, that those people, if they are not doing their jobs, probably need to understand that Congress is watching, and they are going to be brought up here and have a seat where I am, and you will ask them why they are not doing the things that you intended.

I believe that is the power of Congress to do that, and I think you have their attention.

Mr. KILDEE. Well, this side now for the first time in 12 years does have the subpoena power, and that is enormous power. When we pass a law, we certainly should expect the executive branch to carry it out. When we feel that we are getting evidence from all of you today that there has not been that enthusiasm for carrying out all these laws that they should be brought before us.

Then what do we do? I mean, some of them just wait out their time and then leave. But we need some type of enforcement mechanism, almost self-enforcement mechanism, because some will just sit on these things forever.

Mr. Knisell, if you had to pick those who you feel would protect you the most, would it be the federal government, the state government, United mine workers or the coal mine operators? [Laughter.]

Who would protect workers the most? It is probably an easy question.

Mr. KNISELL. United Mine Workers of America.

Mr. KILDEE. You know, that is interesting because my dad would agree with him. Until the UAW came along, there were all types of sweetheart arrangements and neglect of law. So we have to have that gone. The federal government should have strong laws supporting labor. Collective bargaining is very, very important.

Mr. KNISELL. Absolutely.

Mr. KILDEE. The Wagner Act was one of the greatest things that this country has ever passed, and there are those who would like to say there is no place for unions now. I think unions must grow, and this committee has passed out a bill recently to help unions grow. That is going to be very, very important.

So I think you have to look at where you can find your help. You would hope all four of those groups, right—the federal government, the state government, the mine operators and the union—would be

on your side, but Congress has to make sure that everyone does what they are supposed to do.

I appreciate your answer.

Thank you very much.

Mr. KNISELL. You are welcome.

Chairman MILLER. Mr. Kuhl?

Mr. KUHL. I will pass.

Chairman MILLER. Okay. Mr. Yarmuth?

Mr. YARMUTH. Thank you, Mr. Chairman.

I think it is very interesting that it has taken the chairman from California, the ranking member from California, to bring a spotlight on this issue in Congress.

Coming from a state—first of all, let me welcome my three fellow Kentuckians; I appreciate all of your testimony and welcome you—that is obviously directly affected by these issues, but coming from an area of that state which has no coal operations, it has always interested me that part of the culture of this issue is that coal mining is usually done in an area where it is the dominant industry, and in some cases, the only industry and the only source of economic opportunity for anyone, so that whenever there is a problem with those industries, it almost by definition has to be addressed by those outside of that area because there is too much economic pressure inherent in the business.

If we saw similar threats or dangers in an industry that was conducted in an urban area, we would not have to wait 38 years for dramatic action because there would be constant media attention and constant pressure from citizens.

In this particular case, the only time we get media attention is when there is a disaster. Fortunately or unfortunately, we are talking about six people here, 10 people there, 20 people there. It is easy for a country of 300 million to kind of write that off as the cost of doing business.

Unfortunately, we see today the lives that are directly impacted, and it is far more than the cost of doing business. I think this election in part was a resolution of the industry.

Do we in this country ignore human life, do we ignore damage to the environment solely because of jobs and money? I think some of the voters this year said, “We value lives and the environment more than we do necessarily profits and business.”

That is why I think this hearing is so important.

Obviously, we have a situation in which my state potentially benefits a great deal by the pressures to have energy independence and reliance on coal and new coal technologies. I address this specifically to Mr. Howard and Ms. Lee.

In terms of your regions, do you think that your regions can ever say, “We are going to put safety first”—and I am not talking about you individually because I know you have—“the environment second before the potential economic benefit?”

Mr. HOWARD. Are you asking if the coal miner or the coal company—

Mr. YARMUTH. I am talking about your parts of the country. Can we ever break through that culture which says that we have to put people first, we have to put the environment first before we put profits first?

Mr. HOWARD. I think you should put people and the environment first, but I do not believe the coal operator will let you do that.

Mr. YARMUTH. What about the culture, though? What about the society, the region?

Mr. HOWARD. Well, coal is the money there for everybody to live off of. So, you know, you are going to tell a population that you are going to take their income away?

Mr. YARMUTH. I guess my question maybe, if I can reframe it, is: Do you think it is possible that we can ever get the same concerns for people and the environment among the leaders of your region, your area of the state, whether it is local government, whether it is local chambers of commerce?

Ms. LEE. No, no. There are too many—

Mr. YARMUTH. Is that part of the problem we see?

Ms. LEE. There are too many coal operators who hold office in Harlan County or who benefit from coal mining. There are too many bed partners, is what I like to call them, for the fact being one hand washes the other. "Well, will overlook this."

These were six men. These were 16 miners in the state of Kentucky—16 miners in one state—in 1 year. Why do they have to be looked over?

I have had a lot of criticism and I have had a lot of compliments at the same time from miners.

I have moved from the state of Kentucky. I was receiving threats by telephone to my children. My 14-year-old son wears a dark green hoody sweatshirt to catch the bus in the morning, and at 7 a.m., the phone rings, there is mumbo-jumbo in the background, a man's voice says, "You need to shut your mouth. You need to not talk about what you know anything about. Do you know how easy it would be for a coal truck to run off the road and hit your son?" Click.

There are too many people who are afraid.

I have miners who would come to my home and beep, and I would come out, and they would say, "You keep it up. You keep talking because what you are doing protects us. We cannot speak for ourselves because we fear being reprimanded."

I cannot speak just for the county. I have been told that I say that too much. I should not speak for the people. But I do know that I have a 23-year-old brother who is an underground miner in western Kentucky. He called me. He had been underground four months and had not bothered anyone to tell me because they know my feelings on this issue, and he said—I am his oldest sister—"Do you know that they have recently put locators on our belts? Do you know why, sis? Because you are pushing for safety measures."

Things that were overlooked beforehand are now being made aware of. My brother and his coworkers are safer. If it is just one human being, if it is just one female—I hate to be called a widow. I despise the word "Widow"—but so be it. That is what I am, and I am an outspoken widow who will not shut up. I want to keep men safe.

In the county, yes, I believe that you have progress and safety. You can have this together, but it also takes people standing up and taking responsibility for their choices—when you purchase a material that is not even up to code and use it on omega seals,

when you are not taking in the correct education, when you bring a miner in and you tell him to go to an area and build a seal and he has not been educated on how to do this properly and he has left there.

I mean, you can tell my 4-year-old to sit on the floor and build a castle out of his blocks. It may not be the castle you want, but that is what he did because that is all he knows how to do. So is it right to go over and tell him, "You did this wrong." Well, it should have been my place to teach him how to do that. So it should be with the coal operators. They need to be made accountable for what they do in the mines.

So be it in Harlan County. We do have a lot of coal officials who—coal operators, coal miners, coal officials, coal owners—do hold high-ranking status in the county, and because of that, some things are overlooked. I think that the eyes need to be made to open up and look and pay attention.

Mr. YARMUTH. Thank you very much.

Mr. Chairman, I think this is another example of why this is such an important thing that the federal government stay involved in this issue and be very, very diligent and also provide the oversight that Mr. Roberts also encouraged us to do.

Thank you.

Chairman MILLER. Thank you.

Mr. Kuhl?

Mr. KUHL. Thank you, Mr. Chairman. I appreciate the opportunity to participate in the hearing.

Mr. Watzman, I just want to follow up on your testimony a little bit. You mentioned the Grayson report a couple of times in your report. I am curious as to whether or not you can just lend a little more information to the panel here about who sat on this panel and what areas they represented and the kinds of ways in which they came to the conclusions that they reached. I would just like that background information, if you could for me, sir.

Mr. WATZMAN. The commission was an independent body. No one from the National Mining Association staff nor management served on the commission. We reached out to Dr. Larry Grayson at the University of Rolla, Missouri, who is well known in the mining industry from academia, having been a miner, served in government capacities, to chair it. He selected the members.

It was a cross-section across the industry of coal company representatives. Mr. Roberts served on the commission. Academia searched on the commission. Dr. Jeff Kohler from the National Institute of Occupational Safety and Health served on the commission.

And then there were members on it who brought a special expertise to the commission who had no affiliation whatsoever with the mining industry, one who had spent I believe it was something like 30 years or more in the communications industry, and then a professor from the University of Connecticut who was brought in following the shuttle disaster by NASA to be part of the review process there and look at system safety issues.

So it was a cross-section both representing the industry and bringing mining knowledge and those outside the industry who could bring a fresh perspective to the deliberations.

As I said earlier, there were 75 recommendations from the commission, and all of them were adopted unanimously.

Mr. KUHL. How did they reach those recommendations? What process did they go through?

Mr. WATZMAN. They set up subcommittees of the commission members. They were all tasked with certain subcommittees. One looked at training, one looked at communication, and among those committee members, they studied the issues and developed recommendations that they then brought back to the full commission.

Mr. KUHL. Okay. So then they had a general discussion about each one of these and then came up with a vote?

Mr. WATZMAN. It was not a voting process. It was more a unanimous consensus process where they would discuss the issue and reach consensus.

Mr. KUHL. Okay. Good. Thank you.

Mr. Dean, just a couple of questions for you. Obviously, the West Virginia task force has been very active with rescue chambers, and it sounds as though that your initial research found that there were a variety of shortcomings in the chambers themselves and that that was up kind of to the industry to resolve that.

I guess what I am really looking at is, from those recommendations, how do you get from the technology that exists to actual practical application in the mines themselves?

Mr. DEAN. Well, again, in that process and defining those standards, those standards first came out on June the 9th, 2006, and were publicized at that point. They were also shared by mailing those to the chamber manufacturers that we had talked with as a task force that had various ideas. From that point, I mean, these people then went out and made various engineering construction standards changes to meet our standards.

There was thermodynamic analysis. There was finite element analysis to make sure that they met the various standards that we set. Those standards were again set by looking back at various Bureau of Mines reports on construction of chambers in shelters, and since that time, I mean, last year, that is about a 10-month turnaround time for technology development. I mean, I think these chamber manufacturers need to be commended as well as the other members of the task force, I mean, by being actively involved.

People would bring in demos of their products and ask for suggestions, and this task force, again made up of industry and labor representatives, made suggestions. The manufacturers took those to heart, went out and actually made those changes.

Mr. KUHL. Is there any off-the-shelf technology that you can just adapt instantaneously like that in each one of the individual mines?

Mr. DEAN. In chambers?

Mr. KUHL. Yes.

Mr. DEAN. There was a rationale approach outlined in that report by caring people in industry and representatives of labor. These came from coal miners, people that have worked in the mines for years, and based on what they saw of existing technology, a workable way to make improvements based on existing technology with slight modifications, and the result of that is beginning to bear fruit. Again, you know, 10 months for technology

development, I think, is exceptional, and we hope again to see those being implemented very soon in the mines in West Virginia.

Mr. KUHLMAN. Thank you, Mr. Dean.

Mr. Chairman, I see my time has expired. I yield back.

Chairman MILLER. Thank you.

I think the point to be made was there was no time line in existence prior to these accidents, and in 10 months, you took what we would have been led to believe could not happen for years and now are at the point where you will have five manufacturers and people can make their choices under the standards set by the state.

Mr. DEAN. Actually, that deadline of April 15 came from this joint group as a recommendation to me and was put into the roles that mine operators had until April 15 to do this. There was discussion that, well, you know, if the technology is not there, then this group, again, industry and labor jointly, go to government and say, "Hey, we set out a deadline of April 15. We cannot make it," and then it could have been extended, but in this case, it is there.

Chairman MILLER. Perhaps you could not do it for 30 years.

Mr. WATZMAN, if I might ask you, you were talking about the commission with Mr. Kuhl. The commission in its conclusion states that the commission strongly believes that companies which do not pursue the outlined approaches aimed at fulfilling the fundamental safety requirements should not be permitted to operate underground coal mines. Do you agree with that?

Mr. WATZMAN. Yes.

Chairman MILLER. How does that become implemented? Is that a matter for the federal government to tell them, or is it a matter for the association to tell them?

Mr. WATZMAN. I do not think it is a matter for the association to tell them. What we are trying to do in the association is make available to those who are not part of the association and who do not have the resources to undertake new initiatives those tools. That is part of the effort we are undertaking on the risk assessment project with NIOSH. That was the reason that we reviewed the mine rescue protocol.

Chairman MILLER. So the federal government steps in and tells people they cannot operate mines, that they are not complying with these basic recommendations.

Mr. WATZMAN. I think the federal government should enforce the laws that are on the books, and if they are insufficient, then there should be new ones. That is the power that they have.

Chairman MILLER. Okay.

Ms. Shea-Porter?

Ms. SHEA-PORTER. Thank you, Mr. Chairman.

Ms. Lee, I was very interested in your comments and the passion that you delivered them, and I am very sorry about the grief that all of you have experienced through this.

But I do understand what you are talking about in terms of a culture, and I worked in a factory in the summers, and I know that you just did not talk about it or you would be out, and I think that is the culture there.

I wanted to, first of all, say that I do not think we can change that culture by sitting here in Congress and passing these laws, and we cannot change it by putting it in on the books and asking

people to enforce some. We have to change them by reaching into your particular culture and speaking to those who control the coal mines, those who work there.

I am going to ask you: Would it be helpful inside your communities if we did indeed send representatives and called town meetings and made it mandatory for people to understand both in management, in the ownership and also the workers that these were the rules and these were the people that you went and spoke to and that you spoke to your fellow neighbors who worked with you and say, "You must do this. It is no longer going to be because you know so-and-so who happens to be a public official that you can wink at it and look the other way, that you will be held accountable and you will be executed for this."

Would that help if we actually carried it into the towns, and then in addition to that, held monthly or bimonthly meetings where anybody could come and speak about the issues that you are facing in your particular mines in your community that was resisting this kinds of change that you have to have inside your culture?

Ms. LEE. I am not sure if the area would even welcome that. There is too much fear. There is too much fear in being reprimanded.

My great-grandfather was in Harlan. My grandfather was in the Harlan County USA. They were UMWA. They were strong-hearted, and the people now in the area, they want to carry on. Lots of men want to carry on with what they are doing. Miners are proud man, proud people, and they love what they do.

To want to go in to educate an area with what can be done, what should be done is a wonderful thought. I do not think that it could be carried through. I do not.

Ms. SHEA-PORTER. What do you think would work? I mean, how could we provide some kind of a safety shield so that you are able to speak about these issues?

I want to praise you for your courage and all of you here really for standing here knowing that it will be told at home as well. You are making a difference.

But what do you think would actually help to change that culture there? Is there a, you know, whistleblower kind of—

Ms. LEE. I am not exactly sure if there would be. You know, that is the golden egg. That would be the winning answer. I do not believe there is a direct way to make this a cozy, warm, neutral spot. This has been going on for so long. This is ongoing. As you said, this is a coal mining area. This is all they know.

People have left. I mean, I have uncles who left and went to Ohio and into Michigan to work in factories, but to stand now and tell people, "Okay. We are going to do this for you. You can come in and speak out your piece," a lot of people are not going to be brave enough to speak their piece because they do fear being reprimanded.

I am not afraid. I am not afraid. My father and my stepfather both are retired coal miners, and both of them have said to me, "You just have to be so careful because what they can do to you." There is nothing that can be done to me that has not already been done. My heart's already been broken.

I am left to raise my four sons, hence the reason I left the state of Kentucky. I want to keep my children safe. I want them to have the understanding that, you know, you can do this. My oldest son is looking at it. He thinks that studying is going to be his outlet for not going into mining.

It would be lovely if you could have people go in and speak to the public, but if they are going to listen will be the problem.

Ms. SHEA-PORTER. Well, we are grateful to the men to mine every day to bring us this source of energy and grateful to their families, and I hope that as time goes on and more of these issues are aired that people will still more comfortable and that will bring people to the point where you can do your job and be safe.

Thank you.

Chairman MILLER. Thank you.

Mr. Platts?

Mr. PLATTS. Thank you, Mr. Chairman.

I want to thank all the witnesses, and especially Ms. Lee and Ms. Hamner, you and the other loved ones here today, for your efforts here today and your courage in seeking to take personal tragedies and to have them be turned into the public good through improved safety for all the mine workers out there and for their benefit and their families.

You know, I think, Mr. Roberts, you in your testimony talked about, you know, what will come out of this and all these efforts, is about learning from the errors, and those workers out there that we make sure we do right by them and have these tragedies result in some good.

I want to make sure I understood your testimony in trying to get more familiar, as we moved the MINER Act last year and then this hearing today, when we talked about some specific act issues, one being the belt air issue.

Is my understanding correct that in the past, the congressional action was basically to prohibit it with some means of appealing that and getting some exceptions, and the exceptions became the norm and, in essence, MSHA basically made the exception the rule, even though Congress said that should only be a rare exception? Is that correct from what your testimony was?

Mr. ROBERTS. My reading of what Congress did in 1969 and reiterated in 1977 was a prohibition with respect to ventilating the working face with belt air. Certainly, others might have a different interpretation, but I think if you read that, it is hard to come to any other conclusion.

Let me just make a point about that particular situation. Right after Sago, we had the Aracoma Alma disaster where two men died. In 2001, one of the rules that was pending that was withdrawn by the new administration was a prohibition of using flammable belts in the mines.

Then you also have what was done in 1969, prohibition with respect to ventilating the face with belt air. The belt caught on fire, and the face was being ventilated because there was a stopping out by a cross belt area. So those two men died, in my opinion, because of failure to comply with the intent of Congress, number one, and the second one is not to implement a rule prohibiting flammable belts in the mines.

Had those two things been done, as one was clearly the intent of Congress, the second should have been something done by MSHA—there was a rule pending in 2001 that was eliminated—those two miners would be alive today, and there is no debate about that.

Mr. PLATTS. As we go forward, United Mine Workers, your position is that we should redress both of those issues and ban the belt air and no exceptions.

Mr. ROBERTS. That would be our position, and that is not a new position. I think the industry and MSHA both would tell you that we have been very strong on the that. There is strong disagreement by some in the industry with our position, and there is obviously some strong disagreement by some in MSHA with our position, but that is not something we thought about after the tragedy at Alma. That has been a consistent position by the union.

Mr. PLATTS. The second issue about the seals on the abandoned mines, my understanding is recently there has been a bulletin that requires them to withstand greater pressure. Do you think that is going to help achieve the intended protection here, or do we need a whole different approach?

Mr. ROBERTS. NIOSH has come forward with some recommendations with respect to what seals should be constructed and the PSI content of those seals, which is different from what MSHA has done. MSHA has banned omega blocks and other similar materials from being used in the mines. We wish they had done that before the Sago situation, obviously.

Most of those situations are what we would consider to be on a positive track, but, unfortunately, they should have been done previously. We once again believe that the intent of Congress was, in 1969 and 1977, that when you say they have to be explosion-proof, it is hard for us to come to grips that you can have something that is not explosion-proof and can be accidentally destroyed by kicking it, that that protects the miners in the manner that Congress intended.

Mr. PLATTS. I want to quickly try to squeeze in one more question here, Mr. Chairman. I know my time is running short, too.

Mr. Howard and Mr. Knisell, from your experiences—and Ms. Lee, you gave some very strong testimony, important testimony about the ability of you and your fellow miners to come forward when you see wrong and see safety violations—as best you can say and as you are comfortable saying, how common do think it is where someone reports a safety violation and there are repercussions? In other words, they are punished in a minimal way or a great way to discourage you or your fellow miners from coming forward?

Mr. KNISELL. Well, like she was saying earlier, the threat is from the coal companies in different communities. I mean, Harlan County, I mean, that has been a part of the mining industry for years. You know I worked at Felipe Mine, Felipe Development, Spruce One Mine and Sago. Now these three mines here were owned by the same companies, okay. If you got in trouble with one mine or a foreman did not like you or something like that, you went to another mine.

These guys would just skip from here to here. They would take a job bossing. They would take a job as a laborer, doing different jobs, this and that and that and this, but they would blacklist you if you did not cooperate with their way of thinking.

You did not have a voice. You had no say in your safety whatsoever, and, you know, after I actually got out of that mine or out of those mines into the mine that I am at right now where I have a say in my life—

Mr. PLATTS. And you are in a union mine now?

Mr. KNISELL. Yes, sir. Yes, sir.

Chairman MILLER. The gentleman's time has expired.

Ms. McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman.

I thank everybody for their testimony.

To the families that have lost someone, it has been said by many of my colleagues on both sides of the aisles, we thank you for your bravery.

I will say to you that a tragedy happened in my family a number of years ago, and I decided to stand up and fight, and that is why I am sitting here, because I did not particularly like what the politicians were doing. So I just started fighting and came to Congress to try and make a difference in people's everyday lives.

So I thank you for that.

I guess, Mr. Watzman, what I would like to ask you is that, you know, in one area, you know, you talk in your testimony—and I have read everybody's testimony—that, you know, you want to work to make things improved, and yet we hear from Mr. Roberts going back to 1969 about how congress has already passed laws that we have not really implemented.

Yet reading some background information also, I see that a number of times you have actually sued to try to change some of the laws that, you know, the Labor Department has tried to put forth. Can you explain that to me?

I guess the other than that really bothers me, probably from being a teenager, I have always heard or read about the miners' lives, certainly black lung disease—my background is as a nurse—and yet we are still seeing these things happening on a daily basis, and none of you have really talked about—and what a lot of people forget about—is how many accidents are happening every year and how many people are injured every year in the miners' lives and how that affects the family.

Yet representing the coal miner companies, you know, we are not seeing from within the industry, unless the government is forcing it, the industry taking care of those that are working for you. I think that is something that is disgraceful in this day and age.

So I say to the families, you have the voice, you have the power and, yes, I was threatened to when I decided to take a stand, said a few things and had to change my phone number a number of times, and now I just take death threats as whatever. It just happened last week, by the way, again.

So, I mean, these are things that, you know, if you believe in what you are fighting for, fight for it.

We in Congress—it is embarrassing, in my opinion, because after the cameras leave—and, hopefully, you know, this committee will

certainly go forward on trying to make everybody's lives a lot better, but it is 3 years, 3 years, 5 years down the road that you are still going to have to have a voice because we all get caught up in things that we are fighting for until, all of a sudden, another tragedy happens.

Then we will all be sitting here again like, "What happened? Why didn't we force the oversight? Why didn't we force what needed to be done to save lives?"

So, with that, I will go back to the original question on the number of lawsuits that you have had to try to minimize some of those products that the government felt that you should be doing.

Mr. WATZMAN. Thank you for the question, Ms. McCarthy.

Let me start out by saying again, as I did in my statement, we supported the MINER Act. We believed in it then; we believe in it now. We worked hand in hand with Mr. Roberts and his organization, members of this body and the members of the Senate, and we were proud when it passed.

As I said in my statement, we have brought two actions against the Department of Labor Mine Safety and Health Administration because of our legitimate concerns that certain aspects of those raised safety consequences that we are uncomfortable with.

Let me be more specific, if I might. MSHA issued a final rule in December of last year. Part of that rule dealt with the storage of self-contained self-rescuers underground, something that we are short of underground. As I said, 78,000 have been delivered with a backlog of more than 100,000 that have yet to be manufactured.

What we wanted to do was have the ability to store SCSRs, and I have to try to explain this. We have a primary and a secondary escapeway. Oftentimes, those are adjacent. We wanted to be able to store those in the connectors between the two escapeways.

MSHA came out with final regulations that were so onerous that they precluded our ability to store those in those connections. So we are left with the alternative of storing the self-contained self-rescuers in the very escapeways that might be subject to an explosive force or a fire.

We do not think that is as safe an alternative as storing them in those connectors, yet what the government came out with was a regulation that precluded us—

Mrs. MCCARTHY. Taking my time back for a moment, instead of suing, though, did you ever sit down with the regulators and try and figure it out, you know, just across each others' desks without going to a lawsuit which only delays things?

Mr. WATZMAN. We do not have that opportunity. This was done through regulation. We filed comments during the regulatory process.

Mrs. MCCARTHY. Did you come to any members of Congress and ask them to go to bat for you?

Mr. WATZMAN. No, we did not.

Mrs. MCCARTHY. You have a number of members of Congress that represent the different areas. They could have gone down and, certainly, we could have reached out to those in the power and tried to work that out just by a technical change.

Chairman MILLER. The gentlewoman's—

Mr. WATZMAN. I appreciate that, and we will look forward to that option.

Chairman MILLER [continuing]. Time is expired.

Mr. Hare?

Mr. HARE. Thank you, Mr. Chairman.

And thank you all for coming today.

I share the disappointment and the frustration by the chair and the ranking member, but, you know, I have been sitting here today, and it is almost surreal.

To those of you who have lost somebody, I cannot tell you how incredibly sorry I am for your loss. The thing that has to frustrate you, I would think, is that you look and see that these probably could have been prevented and should not have happened and people's lives could have been saved, if MSHA and other people did what they were supposed to do from the very beginning. I think that is appalling.

I want to say to you, Mr. Howard, if you would do me a favor, the next time that foreman suggests that you go down and do something that could put people's lives in jeopardy, I would kind of like to have a chat with him at his earliest possible convenience and maybe he would like to try doing that.

You know, this is not the 1900s or the 1920s. I mean, we are talking about you are being—I mean, what disturbs me is listening to your testimony—told, “It does not matter if Jesus Christ is down there, just get down and do what you are told to do or else.” You know, that is shameful, but it is dangerous and it is appalling.

I cannot find enough words, you know, but I think that type of behavior needs to be reported, and there has to be, I would think, some type of mechanisms in place for people that would put miners in jeopardy knowing that they could be harmed, you know, and there has to be repercussions for people like that in the industry.

Let me just say to the president of UMW, you know, thank heavens for your union because if you did not have the work on the safety issues in your union, I wonder where we would be. We would see a lot more people. So I commend you and all the miners that are here.

I guess what I do not understand—and perhaps, Mr. Roberts, you could enlighten me here—is since 1969—so we are a 38 years, if my math is correct here—since Congress has told the folks to do things, we sit here today after 38 years, and we are still waiting. I mean, why aren't they complying? I mean, I know they are not, okay. I am very clear from the testimony. What is their malfunction, as my kids would say?

Mr. ROBERTS. There are a number of explanations possibly for that, and I do not want to be political here at all, but administrations change, the leadership eventually changes, you get new undersecretaries of labor for MSHA in charge of mine health and safety, you get new secretaries of labor, you get a rule-making process that is so time consuming, it is unbelievable, you get a number of attorneys quite often, and you get, as has been pointed out, occasionally litigation and lawsuits.

Once again, I do not mean to paint with a broad brush, but there are some in the industry that fight a lot of the rules that are implemented and a lot of the regulations that Congress and laws that

that Congress comes up with. So this has been a 117-year fight for us.

It really did not start in 2001 or 1969. If you go back and read our history, this is one of the things that prompted the union's very existence, is to fight for people to be able to walk out of a coal mine alive, and that is how they UMWA was born, quite frankly.

Mr. HARE. I would like to maybe ask the two gentlemen, the two miners that are here, from your perspective, the two or three things that we could do to best make sure that this does not happen again and that when you go to work every day that you can come home to your families.

Mr. HOWARD. Well, I have been in court before and been sold out. I got fired once. I told you about refusing to go with that air.

When I went to the MSHA end filed a 105(c) that was supposed to protect me, I got an attorney, and when the investigator talked to me, he said, "if you get rid of that attorney, you will win, but if you do not, you will lose." Well, I would not get rid of my attorney, and I lost. The judge said my story was unbelievable, but they believed the company.

Money rules. A lot of these judges and politicians and government officials are bought and paid for. It is simple.

Mr. HARE. Mr. Knisell? The two or three things from—

Mr. KNISELL. I was just thinking about what he just said.

Mr. HARE. So was I. It was not good thoughts either, let me tell you.

Mr. KNISELL. Can you repeat the question for me?

Mr. HARE. I just wondered from your perspective—you do this work each and every day—the two or three things that you would want this Congress to do to make sure you have a fair shot of being safe and going home to your family every night.

Mr. KNISELL. Well, for one thing, for someone to actually police the police, MSHA. That is the main thing. And like Mr. Roberts said, bring them in front of you all and make them explain themselves.

Mr. HARE. We are going to do that.

Mr. KNISELL. I remember going to—I cannot remember where it was—maybe it was Buckhannon, maybe it was here—see Mr. Byrd. He really lit into him. He is a great man. He is a great man, and I am not going to go into Republican-Democrat right now, but he is a good man. He has helped us out at, and that is what we need. We need someone to make sure that MSHA is doing their jobs, and MSHA is to police these coal companies.

Chairman MILLER. The gentleman's time has expired.

Mr. HARE. Thank you very much, Mr. Chairman.

Chairman MILLER. Ms. Woolsey?

Ms. WOOLSEY. Thank you, Mr. Chairman.

We have our work cut out for us, and as the chair of the Workforce Protection Subcommittee, I pledge to you to work with the chairman and put some teeth into this.

A lot of courage up there today. I thank all of you. I do not know how you could be here and be so brave when you have lost a loved one, and you miners that are willing to speak up and speak out and have been all along, thank you.

Mr. Roberts, you have been courageous for ever. I think it takes a lot of courage for us to sit up here when we have done virtually nothing useful until just recently on this. We are members of Congress. I have been here 15 years. We have had a couple of hearings, and when I was a freshman, we had one that was really heated, but it did not go anyplace.

But, Mr. Watzman, I think you are the most courageous person. You are sitting here talking to us, representing an industry that until 2006 virtually did not admit that this was a problem. Shame on you.

With these folks up here at the table with you, I think that you, you know, deserve bravery medals for being able to sit here and talk like this with them.

I want to know why you have an industry that waits for the federal government to tell you how to take care of your employees.

Mr. WATZMAN. Ms. Woolsey, thank you for the question.

We do not wait for the federal government, nor does the National Mining Association represent every operator in this industry. Recall that prior to January 2nd of 2006, the industry had just achieved its safest year on record. The state of West Virginia had achieved its safest year on record. We are not satisfied with the record. We want to be sure that every miner returns home safely every day, as I said earlier. But we—

Ms. WOOLSEY. Well, then, reclaiming my time—

Mr. WATZMAN [continuing]. Have just come off the safest year.

Ms. WOOLSEY. Reclaiming my time, I would like to know why in your testimony you were not telling us how your association is insisting that your industry carries them out. You talked a lot about what we can do in the future. I want to know why the laws that are on the books right now are not being enforced by your industry.

Mr. WATZMAN. Our association does not have the ability to police the entire industry. What we try to do is make the tools and the resources available for those who do not otherwise have them so that they could bring their safety of to the level of others.

Ms. WOOLSEY. Okay. I am going to reclaim my time, and I appreciate that. I appreciate that, and I would like to then use the rest of my time asking, Mr. Roberts, will you list some of those 18 factors that you think would improve the Mine Safety Act.

Mr. ROBERTS. Yes, Madam.

Ms. WOOLSEY. Give us the association—

Mr. ROBERTS. Yes, Madam. Thank you, Congresswoman.

Most of the recommendations that we have made—and you find those on beginning on page 9 of our written testimony—would fall in the category of some of the rules that were terminated in 2001. I do not know if you would like me to list all those, but some of those having to deal with—

Ms. WOOLSEY. Talk about the most important ones, if you could.

Mr. ROBERTS. Well, sometimes it is hard to come up with the most important ones, but we have talk in our testimony about atmospheric monitoring systems that detects CO and other gases. We think there is a dire need—and we testified to this in the United States Senate—for a nationwide emergency communications system.

If you look at particularly Sago that occurred in January of 2006, right after a holiday, there was a tremendous amount of confusion and misunderstanding. I do not believe there is too much disagreement between the industry and the union and the agencies about that and, quite frankly, trying to gather up the mine rescue teams that did not get there.

That first mine rescue team did not get on the property until 4 hours after this disaster. The first mine rescue team did not go underground until 10 hours. There was no communications available to those miners who were trapped on the other side.

We talked about this extensively, and we talk about that in these recommendations. But we knew, A, how to prevent these disasters. There are recommendations here that speak to that. Two, we need a better way to deal with these disasters when they occur. We need more mine rescue teams. We have known that for years. It is not something that we just started talking about in 2006. This was discussed going back into the mid 1990s forward, and we still need this.

So those are all listed here, there is about 18 of them, and it is a little hard to say one is more important than the other, but, clearly, we need to prevent these explosions and protect these miners from fires.

One of the things that frustrates us all with respect to Sago is there has been too much time spent arguing about what the ignition source was. just too much, and not enough time examining everything surrounding this. Regardless of the ignition source, all 12 of those miners should have walked out of there alive.

Ms. WOOLSEY. Thank you very much.

Thank you, Mr. Chairman.

Chairman MILLER. Ms. Clarke?

Ms. CLARKE. Thank you very much, Mr. Chairman.

This is a very disturbing hearing. I sit here and I hear from Mr. Roberts about the 117-year struggle to bring this industry to where we know it all can be. Implicitly, we all know that we have the skill, the ability, the talent. We do not have the will.

Then to hear about the benchmark of 1969, I look at Mr. Knisell, and I know that his beard makes him look a little bit older than he probably really is. He was a child, if he was even born, okay, when the standards were set.

That he would be coming into this industry giving of himself and no one has blazed the way for him to go into an industry at standards much greater than his grandparents or great-grandparents may have experienced in America is a disgrace. It is a disgrace. There is no excuse.

I was in kindergarten, and I had to come to Congress to hear that this is where this industry is today? I am from New York, but we know about coal miners. We listened, we read, we heard about black lung disease and what has taken place, and we care. And we care.

It just totally upsets me to be here today to see that in America we have not gotten our act together to deal with this industry the way we know we can do it. We can send people into outer space. They can live on Space Station, but we cannot secure coal miners in America in the 21st century?

Mr. Chairman, I feel like I am in a time warp. I cannot believe it.

So I have a couple of questions because I just want to know is this procrastination, is it foot dragging. I know there is money involved and people freak out around that, but come on. What is obstructionism?

I want to know from Mr. Opegard, when a large mining accident occurs and MSHA is responsible for investigating both the accident itself and whether MSHA's own conduct played a role in the accident, as the investigation system is currently set up, do you think that a fair and honest accident investigation can occur, one?

Then two, Mr. Watzman, you indicate that your organization supports the MINER Act and wants to work hand in hand with the federal government and the families to improve miner safety. You say this even though new safety technologies have been commonplace in the mines of foreign competitors. The American mines have plodded along with antiquated devices.

Please explain why your industry's actions have not addressed these substantive problems and the problems you have with MSHA's final rules.

Those are the two questions. I am a bit dumbfounded here.

Mr. OPEGARD. Thanks, Representative Clarke.

MSHA has a serious problem with accident investigations, and it has been going on for decades. First of all, they do not have subpoena power under the Mine Act, unless they convene a public hearing. There has only been one public hearing since 1977. That was in Louisiana in a nonmetal disaster.

The system is inherently flawed because, number one, coal operators are always allowed to sit in on the interviews of witnesses. Under the Mine Act, operators have a duty, a responsibility to do their own accident investigation and to submit their own report to MSHA. That is usually not required by the agency.

There is no necessity for an operator to sit in on accident investigation interviews, and the effect is intimidation of witnesses. If Mr. Howard worked at the mine and there was an explosion in his mine, he would be asked to testify. The operator in his attorney is going to be sitting right across the table from him. You are not going to get truthful testimony, in most circumstances.

Meanwhile, the families and their representatives are shut out of the process. They are not even told when the interviews are being conducted, and they are not allowed to be there. The only way to get around that is if you are designated a representative of miners by miners in the mine, which happens occasionally, but not usually. It is a flawed process, and it needs to be changed.

Mr. WATZMAN. Thank you, Ms. Clarke, for the question.

As I was discussing with Ms. McCarthy, we did bring suit over two of the issues in the MINER Act. There are many, many other issues that are being implemented that the industry did not challenge and we are working to comply with.

I discussed the issue of self-contained self-rescuers and how we store them underground. The second issue deals with a program information bulletin they have recently issued on supplies of breathable air underground for trapped miners.

Ms. Lee talked about the circumstances that her husband experienced and the O2 tank. As a result of the program information bulletin, many mine operators are going to be left with the choice of storing hundreds of cylinders of oxygen and suppressed air underground to meet this requirement.

That raises in our mind what we think are legitimate safety concerns. Not all operators have the luxury of drilling a borehole from the surface to provide that air underground. Some of those mines are under park land that they cannot get access to, some are under national forests that they cannot get access to, and some are owned by private landowners who will not give them access to the surface. So not all operators have the luxury of that. Many, many more will have to store these cylinders underground, and that is of great concern to us.

As it relates to other countries, I can tell you that I have attended international conferences where other countries look to the United States mining industry as an example of doing it right. We look to their technology and try to implement it.

One of the technologies is a tracker system that is used in Australian. It has been tested in the United States. There are a limited number of mines that are using it in the United States because it has problems in our application. That is just not our determination. That is the determination by the researchers, who have no stake in this issue, at the National Institute of Occupational Safety and Health and the technical experts within MSHA.

If there is technology overseas that will advance miner safety, we will examine its application in the U.S. We are not turning a deaf ear to that.

Chairman MILLER. The gentlewoman's time has expired.

We have a vote on, so we are going to conclude this hearing.

I want to thank all of my colleagues for attending this hearing.

And I think you can see, from the reaction of the members, there is a great deal of alarm here on how the situation has been allowed to gather.

I am trying to remember whether before these accidents we ever had in the last decade an oversight hearing on MSHA or on this problem, and I think the answer may be that we have not, or if we have, it certainly will be in single digits. I think it is none.

You know, one of the commitments that we made during the election is that we would have oversight, and I think you can see that many of the committees, this committee included, are engaged in that vigorous oversight. The Speaker has made it clear that that is what she expects from these committees. So this will continue to.

As Ms. Woolsey mentioned and Mr. Hare, we are going to be involved in some follow-on hearings to this one.

I would just like to take a moment because this is a troubling situation in my mind. Debbie, maybe you want speak to this, but Melissa spoke about the difficulty in the community of speaking out and being critical of the situation in the mines, and Mr. Howard and Mr. Knisell and others spoke to this point, that there is a lot of pressure in these communities.

You know, I think people in dangerous occupations do not like to burden their spouses with concerns that they have, but I just

wondered if this was ever echoed in your discussions with your husbands or when you talk to other spouses.

Ms. HAMNER. Yes. Melissa could have been describing Upshur County, West Virginia, instead of Harlan County, Kentucky. Town meetings are a wonderful thing, but it is not going to work.

Just like the Kentucky coal miner told you, do it or else. When he had safety concerns, you know, he was faced with being fired, and then he talked about being blackballed in that community, in that county, and having to move on to another one. Well, the same things go on. If someone speaks out against safety, then they are blackballed and maybe blackballed, you know, in several counties over the state.

I think Chuck said it best when he said the industry has to be policed, and you have good intentions, but they are not being carried out.

You know, at Sago, I feel that bad practices on the part of International Coal Group and their approval by MSHA killed by husband. First of all, you know, do not stack MSHA with coal company executives. Staff it with people that care about safety. Give them the power to shut down these coal mines if they are not in compliance. [Applause.]

That is the only thing that will make a difference.

They took corporate profits ahead of human lives, and that is not going to change unless they are faced with being shut down. The fines have to stand up to the violations, and MSHA needs to quit reducing those fines, and that is what has to happen.

Chairman MILLER. Thank you.

Ms. LEE. No.

Ms. LEE. No.

Chairman MILLER. Okay. Thank you.

Thank you very much for your testimony.

I would like to follow up on this. I think somehow we have to buy a margin of assurance for mine workers. I guess, in most areas, we call them whistleblowers.

You know, the auto industry will tell you that you can pull the stop cord at anytime on the assembly line if you see a defect or you see a danger, a problem, what have you. I do not know if that is completely accurate, but that is the picture presented by the industry.

Somehow these miners have to be able to speak out without intimidation, without fear or, without fear of retribution or job loss or wage loss or shift change and all the things that go on, apparently, in this workplace.

We have to figure out how we buy them that margin of protection in the law so that they can protect their livelihoods, their safety and that of their fellow workers because it is pretty clear from this testimony, from earlier testimony, from discussions with people in the community that fear and intimidation play a very, very big role in this industry, and that is simply unacceptable.

That was true of many workplaces in many industries in this country, but most of them have changed that culture. We keep hearing about this change of culture. We just do not see it on the ground. You know, we can all talk about how we do not want the federal government to step in, but I do not know who else is going

to protect these workers if the federal government does not step in and keep these workers from being intimidated and being harassed and, in fact, having retribution taken against them for speaking out on behalf of safety.

Mr. Howard, you have made that point very, very clear, and I think others have, too.

So you have fear and intimidation in the communities, in the workplace, in the mine underground, and you have what I think may be a hostile corporate takeover of MSHA, and somehow we are going to have to break these bonds and get this thing right side up in the water because, when the Congress does not have oversight for 12 years, I guess you can do anything in the agency you want.

Well, that is just not going to continue in this current situation, and so we have a lot of work here to do, but what I will not have is I will not have people who want to come forward and talk to this committee be intimidated when they go home, to be intimidated when they go back to work. That is just not acceptable, and that is an obstruction. In my mind, that is just an obstruction of the congressional process and obstruction of justice.

So I would hope that somehow we can get the kind of testimony and the kind of information that we need, and so very often we find out that comes from people who are working in these facilities, in these plants, in these mines, on the waterfront, on ships, that that comes from people who are there every day and experience it.

So I think this has been a very important hearing. I understand now why my colleagues did not want to hear from the families during the aftermath of this tragedy. Unfortunately, I think had we heard from you, the MINER Act would have been stronger and we would have been able to address it.

I want to thank the governor and, Mr. Dean, you, because for all the things that we were told were impossible to do somehow are now starting to get done at least in West Virginia and to some extent in Kentucky, and I appreciate that leadership. You may not get it right, but at least you did not sit on your hands as these tragedies unfolded in front of us. So thank you very much.

Members of the audience and others, if you have heard something and you want to submit comments to the committee, we will certainly welcome them and make them part of the record.

For witnesses, if you think of something that we additionally ought to know as a result of the give-and-take here, that, too, also will be made part of the record.

There will be 14 days for members of the committee to add to the record.

So thank you very much.

And, with that, the committee stands adjourned.

[The statement of Mr. Altmire follows:]

**Prepared Statement of Hon. Jason Altmire, a Representative in Congress
From the State of Pennsylvania**

Thank you, Mr. Chairman, for holding this important hearing to examine how best to protect the health and safety of America's mine workers.

I would like to extend a warm welcome to all of the witnesses. I appreciate the time you took to be here today and look forward to your testimony.

Western Pennsylvania has a long, proud history of coal mining. Some of the first coal reserves mined in the United States were located in the region. Many of my constituents are connected to the coal industry either directly as coal miners or

through their family members and relatives. Not only is coal mining an integral part of the region's heritage, but it is also a key component of the local economy. Pennsylvania is the fourth largest coal producing state in the country with nearly 7,000 employees and over 72 million tons of coal produced in 2005.

Technological innovations and the implementation of safety measures have gone a long way toward reducing the number of accidents and deaths that occur. In 1968, the year before the Coal Act was enacted, 300 miners died. Since 1985, there has not been one year with more than 100 deaths and most years have had significantly less than 100 deaths. While this is a dramatic improvement, more can still be done to ensure the safety of miners. Recent incidents, such as the accidents at Sago Mine in West Virginia and Quecreek Mine in Pennsylvania, remind us that coal mining can be a dangerous profession. I look forward to hearing more about what the proper role of Congress should be in making certain that mines are as safe as possible.

Thank you again, Mr. Chairman, for holding this hearing. I yield back the balance of my time.

[Additional materials supplied by Mr. Dean follow:]

[Internet address to report: "Mine Safety Recommendations," report to the director of the Office of Miners' Health, Safety and Training, by the West Virginia Mine Safety Technology Task Force, dated May 29, 2006 follows:]

*[http://www.wvminesafety.org/PDFs/
MSTTF%20Report%20Final.pdf](http://www.wvminesafety.org/PDFs/MSTTF%20Report%20Final.pdf)*

**WEST VIRGINIA
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OFFICE WEST VIRGINIA
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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Office of Miners' Health Safety & Training TITLE NUMBER: 56CSRCITE AUTHORITY: 22A-1-6; 22A-1-38AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4TITLE OF RULE BEING PROPOSED: RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

Legislative Rule-Making

JAN 18 2007

Review Committee

TITLE 56

Legislative Rule

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

Series 4

EMERGENCY RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

§56-4-1. General.

1.1. Scope.—These emergency rules pertain to the implementation of provisions of W. Va. Code Chapter 22A Article 2-55, relating to the regulation of protective clothing and equipment worn by miners underground by the Office of Miners' Health, Safety and Training.

1.2. Authority.—W. Va. Code Chapter 22A Article 2-55.

1.3. Filing Date.—February 1, 2006.

1.4. Effective Date.—February 9, 2006 (first amendment filed February 27, 2006 effective February 28, 2006 and second amendment filed June 1, 2006 effective July 21, 2006)

§56-4-2. Preamble.

2.1. Purpose.—The primary goal of Title fifty-six Series four W. Va. Code of State Rules is to protect the health and safety of this State's coal miners by requiring

minimum standards for the protective clothing and equipment worn by each underground miner. The purpose of these legislative rules is to require coal mine operators to provide each underground miner with certain protective equipment and by detailing the requirements for such protective equipment. In implementing such mandate, it is recognized that different types of protective equipment may be developed to satisfy the minimum requirements for protective equipment for each mine, depending upon the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and technological advances.

2.2. Escape is the primary procedure to be used by miners in the event of an emergency underground. Self-contained self-rescue devices (SCSRs) are intended to isolate miners from hazardous gases and provide breathable air while attempting to escape the mine during an emergency. In the event that escape-ways are impassable emergency shelters/chambers provide a source of breathable air for miners unable to escape from the mine. Wireless emergency communication and tracking/locating devices are intended to assist in exchanging information between escaping miners and between them and those on the surface following an accident and in locating miners to aid their escape. In addition to the purposes stated above, the intended purpose of these rules is to establish a regulatory regime enabling the advancement of mine safety and health technologies and the proper implementation of these technologies in West Virginia's underground mines.

§56-4-3. Definitions.

3.1. Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code Chapter 22A Articles 1-2 and 2-55 and in W. Va. Code of State Rules Title 36 Series 3-13.

3.2. "Code" shall mean the Code of West Virginia, 1931, as amended.

3.3. "Director" shall herein refer to the Director of the Office of Miners' Health, Safety and Training.

3.4. "Operator" means any firm, corporation, partnership, or individual operating any coal mine or part thereof, or engaged in the construction or maintenance of any facility associated with a coal mine, and shall include any independent contractor at a coal mine.

3.5. "Independent Contractor" means any firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine, excluding mine vendors, office equipment suppliers, service or delivery personnel; Provided they or their employees do not go underground.

3.6. "Self-Contained Self-Rescuer" (SCSR) means a type of closed-circuit self-contained breathing apparatus or its equivalent approved by the Mine Safety and Health Administration of the United States Department of Labor for the purpose of isolating a miner from hazardous gases and providing breathable air to aid in an escape.

3.7. "SCSR Storage Cache" means a non-combustible container constructed to withstand normal mine conditions, protect a number of SCSRs, and allow easy access for inspection of the SCSRs and easy access for miners who are escaping.

3.8. "Emergency Shelter/Chamber" means an enclosed space located within 1,000 feet of the nearest working face with all sides made from man-made materials whose function is to protect the occupants from hazardous gases and provide breathable air in the event escape is not possible.

3.9. "Emergency communications" means the transmission and reception of voice, data and/or information regarding an unexpected event requiring immediate action.

3.10. "Wireless" means allowing individual communications by a miner through a mine communication and tracking/locating system without a physical connection.

3.11. "Communication device" means equipment that is a component of an integrated mine communication and tracking/locating system for purposes of emergency communication.

3.12. "Physical location" means the position of a miner in relation to a tracking device at a known location to enhance escape and/or rescue.

3.13. "Tracking/location" means knowing the physical location of miners at the moment of an accident and as escape progresses if the tracking/location system being used is still functional.

3.14. "Tracking/locating device" means equipment that is a component of an integrated mine communication and tracking/locating system for the purpose of providing the physical location of a miner during an emergency.

3.15. "Apparent-Temperature" means a heat stress indicator that considers the effects of temperature and humidity.

§ 56-4-4. Mine Safety Technology Task Force.

4.1. Within seven (7) calendar days of the effective date of these rules, the Director shall establish a Mine Safety Technology Task Force to provide technical and other assistance related to the implementation of the new technological requirements set forth in W. Va. Code Chapter 22A Article 2-55. The task force shall be comprised of three miners from the major employee organization representing coal miners in this state and three miners from the major trade association representing underground coal operators in this state. All actions of the task force shall be by unanimous vote.

4.2. The task force, working in conjunction with the Director, shall study technology and technology usage issues related to the implementation, compliance and enforcement of the safety requirements covered under W. Va. CSR Title 56 Series 4. Additionally, the task force may study related safety measures as requested by the Director. In conducting its study, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, technology experts and relevant state and federal regulatory personnel.

4.3. The Director, or his designee, shall preside over all meetings of the working group.

4.4. Prior to adopting or modifying any technological safety requirement pursuant to W. Va. CSR Title 56 Series 4 the Director shall request recommendations from the task force and shall consider their written report on the subject in making any determination.

4.6. The Director shall convene the Mine Safety Technology Task Force not less than once per month.

§ 56-4-5. Self-Contained Self-Rescue Devices Provided for Escape from Mines.

5.1. Each miner underground shall be provided an SCSR in accordance with the provisions of W. Va. Code Chapter 22A Article 2-55(f). In addition, the operator shall provide storage caches of additional SCSRs throughout the mine in accordance with a Storage Cache Plan approved by the Director pursuant to W. Va. CSR Title 56 Series 4-6.

5.2. Each SCSR shall be approved for at least sixty (60) minutes by the Mine Safety and Health Administration (MSHA) of the United States department of labor: Provided, however, that nothing contained herein shall preclude an operator from providing each miner underground an SCSR with an MSHA approved rating less than sixty (60) minutes of breathable air that is adequate to provide for twice the travel time as defined in the chart in W. Va. CSR Title 56 series 4-6 to the nearest storage cache, as defined in W. Va. CSR Title 56 Series 4-6, or an escape facility.

5.3. Each operator shall provide training in the proper use of SCSRs in simulated emergency situations in all required SCSR training, provided, such simulations may be conducted on the surface. Training shall be in compliance with all manufacturers requirements and shall include but not limited to; the risks of toxic gases, manufacturer's required daily inspections, donning and starting the SCSR, limitations of the SCSR, ways to maximize duration of the unit, changing between SCSRs, communicating without removing the mouthpiece, importance and use of goggles, how to know if the device has failed and what to do if it does.

5.4. Pursuant to W. Va. Code Chapter 22A Article 1-23, operators and independent contractors shall report to the Director all SCSRs in-service by manufacturer, model, serial number, mine/contractor ID#, service dates, and results of required inspections. This information shall be submitted electronically as defined by the Director, updated quarterly and will include information on any units removed from service along with the reasons.

5.5. The Director shall compile and analyze the results of this information and distribute a report within 30 days by posting the report on the MHS&T web page, <http://www.wvminesafety.org>

5.6. The Director shall establish a program to periodically evaluate the quality of SCSRs in-service in West Virginia mines through collection and testing of a statistically significant number of units of differing ages and representative of models used in W. Va. mines. The results of such evaluations will be published on the MHS&T web page <http://www.wvminesafety.org>

§ 56-4-6. Self-Contained Self-Rescue Device Storage Cache Plan.

6.1. Within thirty (30) calendar days of the effective date of these rules, all operators of all mines shall submit an SCSR Storage Cache Plan for approval by the Director in accordance with W. Va. Code Chapter 22A Article 1-36. The design, development, submission, and implementation of the SCSR Storage Cache Plan shall be the responsibility of the operator of each mine.

6.2. Operators shall revise all approved SCSR storage cache plans and submit those to the Director no later than 60 days after any amendments to these rules become final.

6.3. Within thirty (30) calendar days after submission of the SCSR Storage Cache Plan, the Director shall either approve the plan as submitted, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

6.4. In developing the SCSR Storage Cache Plan, the operator shall take into consideration the needs for SCSRs in the accidents described in W. Va. Code Chapter 22A Article 2-66, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine the operator deems relevant to the development of the Storage Cache Plan.

6.5. Each SCSR Storage Cache shall be housed in a container constructed as to protect the SCSRs from normal operational damage, be made of a material that is non-combustible, shall be easy to open during an emergency escape, shall be noted on the escape-way map, required by W. Va. Code Chapter 22A Article 2-1 and included in the mine rescue plan pursuant to W. Va. Code Chapter 22A Article 1-35(q).

6.6. One SCSR storage cache shall be placed at a readily available location within five hundred (500) feet of the nearest working face in each working section of the mine and each active construction or rehabilitation site. Distances greater than five hundred (500) feet not to exceed one thousand (1,000) feet, are permitted with approval of the Director. However, where miners are provided with personal SCSRs MSHA rated for less than sixty (60) minutes, travel to these storage caches are not to exceed five (5) minutes as determined by the height/travel time table as specified in W. Va. Code of State Rules Title 56 Series 4-6.9.2.

6.7. Each of the storage caches specified in Section 6.6 shall contain two (2) SCSRs that will provide at least sixty (60) minutes of MSHA rated duration per unit for each miner. When each miner carries an SCSR that is MSHA rated for less than sixty (60) minutes the storage cache shall hold devices equivalent to three (3) sixty (60) minute MSHA rated SCSRs for each miner. The total number of SCSRs in a stationary storage cache location will be based on the total number of miners reasonably likely to be in that area. During crew changes involving a mantrip at a working section or an active construction or rehabilitation site, a number of mantrip cached sixty (60) minute or greater MSHA rated SCSRs equal to the total number of miners reasonably likely on the mantrip shall satisfy the total number of SCSRs required for such personnel.

6.8. Operators shall ensure that storage caches required in Section 6.6 contain an escape kit containing a hammer, a tagline, a supply of chemical light sticks, and an escape-way map required by W. Va. Code Chapter 22A Article 2-1.

6.9. Additional storage caches of sixty (60) minute or longer MSHA rated SCSRs shall also be placed in readily available locations throughout the remainder of the mine as follows:

6.9.1. Beginning at the storage cache located at the working section or active construction or rehabilitation site and beltlines, pumping and bleeder areas, and continuing to the surface or nearest escape facility leading to the surface pursuant to W. Va. Code Chapter 22A Article 2-60, the operator shall station additional storage caches of sixty (60) minute or longer MSHA rated SCSRs containing a number of additional SCSRs equal to or exceeding one each for the total number of miners reasonably likely to be in that area at calculated intervals that a miner may traverse in no more than thirty (30) minutes traveling at a normal pace, taking into consideration the height of the coal seam and utilizing the travel times as specified in W. Va. CSR Title 56 Series 4-6-9.2. If an SCSR has an MSHA approved duration greater than sixty (60) minutes the intervals between storage caches shall be calculated at the distance traveled in one-half the approved duration.

6.9.2. Said intervals shall be calculated in accordance with the following:
 Height/Travel/ Minute
 28 inches/70 feet/56 inches/180 feet/32 inches/90 feet/60 inches/220 feet/36 inches/100 feet/64 inches/270 feet/40 inches/120 feet/68 inches/280 feet/44 inches/135 feet/72 inches/290 feet/48 inches/150 feet/76 inches/295 feet/52 inches/160 feet/80 inches/300 feet

6.10. The Storage Cache Plan shall include the following:

6.10.1. The size and physical features of the mine;

6.10.2. The maximum number of miners underground during each working shift;

6.10.3. The proposed location of the various storage caches and the emergency shelter/chamber in relation to miners underground; and

- 6.10.4.a. A schedule of compliance, which shall include:
- 6.10.4.a.1. A narrative description of how the operator will achieve compliance with §56-4-6.
 - 6.10.4.a.2. A schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and
 - 6.10.4.a.3. A statement indicating when the implementation of the proposed plan will be complete.
- 6.11. Each operator shall submit as attachments to its SCSR Storage Cache Plan the following:
- 6.11.1. A statement that the analysis and evaluation required by Section 6.3 of these rules has been completed;
 - 6.11.2. A statement indicating the training dates for the use of the SCSRs; and
 - 6.11.3. The name of the person or persons representing the operator, including his or her title, position, mailing address and telephone number, who can be contacted by the Director for all matters relating to the Storage Cache Plan and the weekly inspections of each storage cache.
- 6.12. Within thirty (30) calendar days of the Director's approval of the plan, the operator shall submit to the Director a copy of any contract, purchase order, or other proof of purchase of such number of additional SCSRs consistent with the operator's schedule of compliance.
- 6.13. After the Director has approved an operator's SCSR Storage Cache Plan, the operator shall submit revisions to the plan at any time that changes in the operational conditions result in substantive modifications. In addition, at any time after the Director has approved an operator's Storage Cache Plan, the operator may submit proposed modifications or revisions to its plan along with the reasons therefore to the Director.
- 6.13.1. Within thirty (30) calendar days after receipt by the Director of any proposed revisions or modifications to the Storage Cache Plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.
 - 6.13.2. The Director may require modifications to a Storage Cache Plan at any time following the investigation of a fatal accident or serious injury, as defined by W. Va. CSR Title 36 Section 19-3.2, if such modifications are warranted by the findings of the investigation.
- 6.14. If the Director, in his sole discretion, determines that an operator has failed to provide an SCSR Storage Cache Plan or progress report, has provided an inadequate SCSR Storage Cache Plan or progress report, has failed to comply with its approved SCSR Storage Cache Plan or compliance schedule, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with W. Va. Code Chapter 22A Article 2-55 or these rules, the Director shall issue a cessation order to the operator for the affected mine in accordance with W. Va. Code Chapter 22A Article 1-15.
- 6.15. As provided at W. Va. Code Chapter 22A Article 2-55(f)(3) any person that, without the authorization of the operator or the Director, knowingly removes or attempts to remove an SCSR from the mine or mine site with the intent to permanently deprive the operator of the device or knowingly tampers with or attempts to tamper with such a device shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

§56-4-7. Placement of Intrinsically Safe Battery-Powered Lights and Lifeline Cords.

7.1. Intrinsically safe battery-powered strobe lights approved by the Director shall be affixed to each storage cache of SCSRs and shall operate continuously or be capable of automatic activation in the event of an emergency.

7.1.1. All intrinsically safe battery-powered strobe lights affixed to each storage cache of SCSRs shall be approved by the Director and MSHA and maintained in accordance with applicable MSHA requirements.

7.1.2. Prior to approval of any MSHA certified intrinsically safe battery-powered strobe light the Director shall have prepared an independent analysis of the added risk incurred from added battery powered devices throughout the mine in the event of a catastrophic explosion.

7.1.3. The Director if determining that intrinsically safe battery-powered strobe light present an acceptable risk, shall review those rated intrinsically safe by MSHA and may approve them for use in West Virginia mines. A list of approved intrinsically safe battery-powered strobe lights shall be maintained on the MHS&T web site.

7.2. A reflective sign with the words “SELF-RESCUER” or “SELF-RESCUERS” shall be conspicuously posted at each such storage cache and reflective direction signs shall be posted leading to each storage cache.

7.3. Lifeline cords installed in primary escape-ways shall be attached to each storage cache container and extend from the last permanent stopping to the surface or nearest escape facility, excluding belt and track entries, and must:

7.3.1. Be made of flame-resistant material;

7.3.2. Be marked with reflective material every twenty-five (25) feet;

7.3.3. Be located in such a manner for miners to use effectively to escape; and

7.3.4. Have directional indicators signifying the route of escape placed at intervals not exceeding one hundred (100) feet.

7.3.5.

In lieu of installed lifelines in track or belt entries, markers such as floor mats with arrows, fish plate reflectors, red/green lasers shall be installed at distances not to exceed 1,000 feet or line of sight, or other equivalent devices may be used if approved by the Director.

7.4. The operator shall conduct weekly inspections of each storage cache of additional SCSRs, the affixed strobe light, and each lifeline cord or other similar device to ensure that each has not been tampered with and will function properly in the event of an emergency.

7.4. As provided in W. Va. Code Title 22A Article 2-55(f)(3) any person that, without the authorization of the operator or the Director, knowingly removes or attempts to remove an intrinsically safe battery-powered lights or lifeline cord approved by the Director from the mine or mine site with the intent to permanently deprive the operator of the device or knowingly tampers with or attempts to tamper with such a device shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

§56-4-8. Emergency Shelters/Chambers.

8.1. An emergency shelter/chamber shall be maintained within one thousand (1,000) feet of the nearest working face in each working section. Such emergency shelter/chamber shall be approved by the Director and shall be constructed and maintained in a manner prescribed by the Director.

8.1.1. The Director may approve, as an alternative to a shelter/chamber, an additional surface opening located no more than 1,000 feet from the nearest working face and accurately located on escape-way maps as required in W. Va. Code Chapter 22A Article 2-1.

8.2. The Director shall acquire, no later than July 1, 2006, the necessary technical/engineering support needed to evaluate the performance of emergency shelter/chamber components/systems, and to review the effectiveness of emergency shelter/chamber plans.

8.3. The Director shall, no later than July 10, 2006, issue an open opportunity for emergency shelter/chamber providers to submit products for approval. The Director shall maintain a current list of pending and approved emergency shelter/chambers on the West Virginia MHS&T web site <http://www.wvminesafety.org>

8.3.1. Providers of emergency shelter/chamber seeking approval shall submit documentation prescribed by the Director that shall include a certification by an independent West Virginia licensed professional engineer that the proposed product meets the requirements set forth in Section 8, a description of the process used in making that determination and a certification in the following form: “I, the undersigned, hereby certify that this product, to the best of my knowledge and belief, meets or exceeds all requirements set forth in W. Va. CSR Title 56 Series 4-8.”

8.4. Any emergency shelter/chamber approved by the Director shall:

8.4.1. Provide a minimum of 48 hours life support (air, water, emergency medical supplies, and food) for the maximum number of miners reasonably expected on the working section;

8.4.2. Be capable of surviving an initial event with a peak overpressure of 15 psi for 3 seconds and a flash fire as defined by National Fire Protection Association standard NFPA-2113 of 300 degrees Fahrenheit for 3 seconds;

8.4.3. Be constructed such that it will be protected under normal handling and pre-event mine conditions;

8.4.4. Provide for rapidly establishing and maintaining an internal shelter atmosphere of oxygen above 19.5%, carbon dioxide below 0.5%, carbon monoxide below 50 ppm, and an apparent-temperature of 95 degrees Fahrenheit;

8.4.5. Provide the ability to monitor carbon monoxide and oxygen inside and outside the shelter/chamber;

8.4.6. Provide a means for entry and exit that maintains the integrity of the internal atmosphere;

8.4.7. Provide a means for MSHA certified intrinsically safe power if power required;

8.4.8. Provide a minimum eight quarts of water per miner;

8.4.9. Provide a minimum of 4,000 calories of food per miner;

8.4.10. Provide a means for disposal of human waste to the outside of the shelter/chamber;

8.4.11. Provide a first aid kit as defined at W. Va. Code Chapter 22A Article 2-59(3)(b) independent of the section first aid kit required by W. Va. Code Chapter 22A Article 2-59(3) and 2-60(f);

8.4.12. Have provisions for inspection of the shelter/chamber and contents;

8.4.13. Contain manufacturer recommended repair materials;

8.4.14. Provide a battery-powered occupant-activated strobe light of a model approved by the Director that is visible from the outside indicating occupancy;

8.4.15. Provide provisions for communications to the surface; and

8.4.16. Provide proof of current approval for all items and materials subject to MSHA approval.

8.5. No later than April 15, 2007 all underground mine operators shall submit an emergency shelter/chamber plan for approval by the Director in accordance with W. Va. Code Chapter 22A Article 1-36. The design, development, submission, and implementation of the shelter/chamber plan shall be the responsibility of the operator of each mine.

8.6. Within thirty (30) calendar days after submission of the emergency shelter/chamber plan, the Director shall either approve the emergency shelter/chamber plan or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reason for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

8.7. Within 15 days of approval of the emergency shelter/chamber plan by the Director, the underground mine operator shall submit as an addendum to its emergency shelter/chamber plan a copy of any contract, or purchase order, or other proof of purchase of any equipment required to complete the emergency shelter/chamber and for installation and ongoing maintenance

8.8. The operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

8.9. After the Director has approved an operator's emergency shelter/chamber plan, the operator shall submit revisions to the emergency shelter/chamber plan at any time that changes in operational conditions result in substantive modification. In addition, at any time after approval, the operator may submit proposed modifications or revisions to its plan along with reasons therefore to the Director. Within thirty (30) days after receipt by the Director of any proposed revisions or modifications to the emergency shelter/chamber plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

8.10. In developing the emergency shelter/chamber plan and any revisions, the operator shall take into consideration the physical features of the particular mine, emergency plans, advances in emergency shelter/chamber technologies and any other aspect of the particular mine the operator deems relevant to the development of the emergency shelter/chamber plan.

8.11. A copy of the approved emergency shelter/chamber plan shall be provided to the mine rescue teams providing coverage for the mine and included in the mine rescue program required by W. Va. Code Chapter 22A Article 1-35(q). Copies of the most recent version shall be available at the mine for emergency responders. As changes are made to the approved emergency shelter/chamber plan, updated versions shall be submitted to the above parties.

8.12. The proposed emergency shelter/chamber plan shall:

8.12.1. Describe the structure and operations of the emergency shelter/chamber, the surveyed location of the shelter and any necessary survey monuments for locating emergency drilling operations to the shelter/chamber and the shelter/chamber's role in emergency response;

8.12.2. Ensure that proper emergency shelter/chamber use is included in initial mine hazard training in such a manner that it is in compliance with all manufacturer's requirements and is provided yearly in addition to annual refresher training. All training shall be recorded and made available upon request;

8.12.3. Ensure weekly inspections of emergency shelters/chambers and contents shall be conducted by a certified mine foreman and/or mine examiner and recorded in weekly ventilation examination book;

8.12.4. Ensure that weekly safety meetings review the current location of applicable emergency shelters/chambers and results of the latest inspection;

8.12.5. Ensure that all opening to emergency shelters/chambers shall be equipped with easily removable tamper-proof tags such that a visual indication of unauthorized access to the emergency shelter/chamber can be detected; and

8.12.6. Ensure that the mine's communication center shall monitor any communication systems associated with the emergency shelter/chamber at all times that the mine is occupied.

8.13. If the Director, in his sole discretion, determines that an operator has failed to provide an emergency shelter/chamber plan or progress report, has provided an inadequate emergency shelter/chamber plan or progress report, has failed to comply with its approved emergency shelter/chamber plan or compliance schedule, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with W. Va. Code Chapter 22A Article 2-55 or these rules, the Director shall issue a cessation order to the operator for the affected mine.

8.14. If there are no emergency shelters/chambers approved by May 29, 2007, operators shall install in lieu of an emergency shelter/chamber, within one thousand (1,000) feet of the nearest working face in each working section, storage caches of SCSRs sufficient to provide each miner reasonably expected to be at the working section with no less than sixteen (16) additional SCSRs rated by MSHA each for a duration of sixty (60) minutes or greater, or an equivalent amount of breathable air and barricading materials described at W. Va. Code Chapter 22A Article 2-58(n).

8.15. The Director may require modifications to an emergency shelter/chamber approval or an emergency shelter/chamber plan at any time following the investigation of a fatal accident or serious injury, as defined by W. Va. CSR Title 36 Series 19-3.2, if such modifications are warranted by the findings of the investigation.

8.16. As provided in W. Va. Code Title 22A Articles 2-55(f)(3), 2-55(g)(2), and 2-55(h)(2) any person that, without the authorization of the operator or the Director, knowingly removes or attempts to remove emergency shelter/chamber or its contents approved by the Director from the mine or mine site with the intent to permanently deprive the operator of the device or knowingly tampers with or attempts to tamper with such a device shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

§56-4-9. Wireless Emergency Communication and Tracking/Locating systems.

9.1. The Director shall require, in each underground mine, an integrated communication and tracking/locating system maintained consistent with W. Va. CSR Title 36 Series 5-3.2 and a component of which shall be a communication center monitored at all times during which one or more miners are underground. A wireless emergency communication and tracking/locating device approved by the Director shall be worn by each miner underground and shall be provided by the operator.

9.2. As soon as practicable, the Director shall notify all operators of the wireless emergency communication and tracking/locating devices approved by the Director for use by each miner underground pursuant to W. Va. Code Chapter 22A Article 2-55.

9.3. The Director shall acquire, no later than July 1, 2006, the necessary technical/engineering support to evaluate the performance of individual communication/tracking devices and review the effectiveness of proposed communication/tracking plans.

9.4. The Director shall, no later than July 10, 2006, issue an open opportunity for emergency communication and tracking/locating providers to submit products for approval.

9.5. The Director shall require providers seeking approval submit documentation certified by a licensed West Virginia professional engineer that the product has been tested for functionality in West Virginia underground mines, that the product has been or is in the process of being approved as intrinsically safe by MSHA and other criteria as the Director determines, a description of the process used in making that determination and a certification in the following form: "I, the undersigned, hereby certify that this product, to the best of my knowledge and belief, meets or exceeds all requirements set forth in W. Va. CSR Title 56 Series 4-9", that the product has been tested for functionality in West Virginia underground mines, that the product has been or is in the process of being approved as intrinsically safe by MSHA and other criteria as the Director determines.

9.6. No later than July 31, 2007 all underground mine operators shall submit a communication/tracking plan for approval by the Director in accordance with W. Va.

Code Chapter 22A Article 1-36. The design, development, submission, and implementation of the communication/tracking plan shall be the responsibility of the operator of each mine.

9.7. Within thirty (30) calendar days after submission of the communication/tracking plan, the Director shall either approve the communication/tracking plan, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reason for such rejection. If the plan is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

9.8. Within 15 days of approval by the Director, the underground mine operator shall submit as an addendum to its plan, a copy of any contract, or purchase order, or other proof of purchase of any equipment required to complete the communication/tracking system and for installation and ongoing maintenance.

9.9. The operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

9.10. If the Director, in his sole discretion, determines that an operator has failed to provide an communication/tracking plan or progress report, has provided an inadequate communication/tracking plan or progress report, has failed to comply with its approved communication/tracking plan or compliance schedule, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with W. Va. Code Chapter 22A Article 2-55 or these rules, the Director shall issue a cessation order to the operator for the affected mine under W. Va. Code Chapter 22A Article 1-15.

9.11. In developing the communication/tracking plan and any revisions, the operator shall take into consideration the needs for emergency communications and tracking/locating resulting from accidents as described at W. Va. Code Chapter 22A Article 2-66(a), physical features of the particular mine, emergency plans, existing communication infrastructure, communications required under W. Va. Code Chapter 22A Article 1-35(k) and 2-42 and W. Va. CSR Title 36 Series 2-2 and 5-2, advances in communication/tracking technologies and any other aspect of the particular mine the operator deems relevant to the development of the communication/tracking plan.

9.12. The proposed communication/tracking plan shall describe the structure and operations of the separate or integrated communication/tracking system(s) and its role in emergency response specific to the mine shall be detailed and submitted to the Director and, once approved, to the mine rescue teams providing coverage with an updated mine rescue program pursuant to W. Va. Code Chapter 22A Article 1-35(q). Copies of the most recent version shall be available at the mine for emergency responders. As changes are made to the system, updated versions shall be submitted to the above.

9.13. The proposed communication/tracking system shall include the ability for:

9.13.1. A communication center monitored at all times during which one or more miners are underground.

9.13.1.1. This center shall be staffed by miners holding a valid underground miners certificate, and trained and knowledgeable of the installed communications/tracking systems, monitoring and warning devices, travel ways, and mine layout.

9.13.1.2. Individuals not possessing a valid underground miner's certificate but working full-time as a communication center operator on or before May 25, 2006 shall be allowed to continue as communications center operators at that mine provided they will have successfully completed no later than December 31, 2006 a certified 80 hour underground miners apprentice training program, as defined in W. Va. CSR Title 48 Series 2-2.7(a), renewed annually pursuant to W. Va. CSR Title 48 Series 2-2.8(a) and documentation is available for inspection consistent with W. Va. CSR Title 36 Series 24-5;

9.13.2. Knowing the location of all miners immediately prior to an event by tracking/locating device in the escape-ways, normal work assignments, or notification of the communication center;

9.13.3. Knowing the location of miners in the escape-ways after an event providing the tracking system is still functional;

9.13.4. Check-in and check-out with the communication center by miners prior to entrance and exit from bleeders and remote or seldom used areas of the mine (all times shall be logged);

9.13.5. Allowing two way communications coverage in at least two separate air courses and at least one of which shall be an intake;

9.13.6. Maintaining communication/tracking after loss of outside power and maintain function both inby and outby of the accident event site with suitable supply of equipment for rapid reconnection;

9.13.7. Maintain a surface supply of communication/ tracking devices for use by emergency rescue personnel;

9.13.8. Allow for communication to surface at all required emergency shelters/ chambers;

9.13.9. All miners and likely emergency responders shall be trained in the use, limitations and inter-operability of all components of the communication and tracking/locating system. This shall be incorporated into ongoing required training. All training shall be recorded and made available upon request;

9.14. The operator shall provide a schedule of compliance for the communication/ tracking plan, which shall include:

9.14.1. A narrative description of how the operator will achieve compliance with above requirements;

9.14.2. A schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

9.14.3. A statement indicating when the implementation of the proposed plan will be complete.

9.15. The operator shall provide as attachments to its communication/tracking plan:

9.15.1. A statement of the analysis and evaluation required in developing its plan;

9.15.2. A statement indicating the initial training dates for implementation of the communication/ tracking system and how the communication/tracking system will be incorporated in other required training;

9.15.3. A statement regarding how the communications/tracking system will be tested and maintained; and

9.15.4. The name of the person or persons representing the operator, including his or her title, mailing address, email address and telephone number, who can be contacted by the Director for all matters relating to the communication/tracking plan and weekly testing of the system.

9.16. After the Director has approved an operator's communication/tracking plan, the operator shall submit revisions to the communications plan at any time that changes in operational conditions result in a substantive modification in the communication/tracking system. In addition, at any time after approval, the operator may submit proposed modifications or revisions to its plan along with reasons therefore to the Director. Within thirty (30) days after receipt by the Director of any proposed revisions or modifications to the communications/tracking plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

9.17. The Director may require modifications to a communication/tracking plan at any time following the investigation of a fatal accident or serious injury, as defined by W. Va. CSR Title 36 Series 19-3.2, if such modifications are warranted by the findings of the investigation.

9.18. As provided in W. Va. Code Chapter 22A Articles 2-55(g)(2) and 2-55 (h)(2) any person that, without the authorization of the operator or the Director, knowingly removes or attempts to remove any component of an communication/tracking system approved by the Director from the mine or mine site with the intent to permanently deprive the operator of the component or knowingly tampers with or attempts to tamper with such a system or its components shall be deemed guilty of a felony and, upon conviction thereof, shall be imprisoned in the a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

ENROLLED
COMMITTEE SUBSTITUTE

for

H. B. 2670

(By Delegates Brown, Miley, Burdiss, Talbott and Overington)

[Passed March 10, 2007; in effect from passage.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented

to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to protective clothing and equipment; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to standards for certification of coal mine electricians; authorizing the Bureau of Employment Programs to promulgate a legislative rule relating to requiring agencies to revoke or not grant issue or renew approval documents with employing units on the Bureau's default list; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild-life disease management; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

Article 10. Authorization for Department of Commerce to Promulgate Legislative Rules.

§ 64-10-1. Office of Miners Health Safety and Training.

(a) The legislative rule filed in the State Register on the twenty-seventh day of April, two thousand six, authorized under the authority of section six, article two, chapter twenty-two-a, section thirty-eight, article two, chapter twenty-two-a and section fifty-five, article two, chapter twenty-two-a of this code, modified by the Office of Miners Health Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training (protective clothing and equipment, 56 CSR 4), is authorized with the following amendments:

On page one, subsection 1.1., by striking out the words "these emergency rules" and inserting in lieu thereof the words "this rule";

On page one, subsection 2.1., by striking out the word "State's" and inserting in lieu thereof the word "state's";

On page one, subsection 2.1., line four, by striking out the words "these legislative rules" and inserting in lieu thereof the words "this rule";

On page two, subsection 2.2., by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page two, subsection 3.1., by striking out the words "as they are defined" and inserting in lieu thereof the word "used";

On page two, subsection 3.2., by striking out the words "shall mean" and inserting in lieu thereof the word "means";

On page two, subsection 3.3., by striking out the words "shall herein refer" and inserting in lieu thereof the word "means";

On page three, subsection 4.1., by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page four, subsection 5.2., by striking out "department of labor" and inserting in lieu thereof "Department of Labor";

On page four, subsection 5.2., after the word "Provided," by striking out "However,";

On page four, subsection 5.3., line three, after the word "training" by striking out the comma and the word "provided" and inserting in lieu thereof a colon and the words "Provided, That" and by striking out the word "manufacturers" and inserting in lieu thereof the word "manufacturers";

On page four, subsection 5.3., after the words "limited to" by changing the semi-colon to a colon;

On page five, subsection 6.1., by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page five, subsection 6.2., by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page eight, subparagraph 6.10.4.a.1., by striking out "§56- 4-6" and inserting in lieu thereof "56 CSR 4-6";

On page nine, subsection 6.14., by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page nine, by striking out subsection 6.15. in its entirety;
 On pages ten and eleven, by striking out subsection 7.4. in its entirety;
 On page eleven, by redesignating subdivision 8.1.1. as subsection 8.2. and redesignating the remaining subsections accordingly;
 On page eleven, by redesignating subdivision 8.3.1. as subsection 8.5. and redesignating the remaining subsections accordingly;
 On page fifteen, subsection 8.13., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;
 On pages fifteen and sixteen, by striking out subsection 8.15. in its entirety;
 On page seventeen, subsection 9.10., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

And,

On page twenty, by striking out subsection 9.18. in its entirety.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of sections six and thirty-eight, article one, chapter twenty-two-a of this code, modified by the Office of Miners Health Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training (standards for certification of coal mine electricians, 48 CSR 7), is authorized, with the following amendments:

“On page three, subsection 4.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “8.3”;

On page four, section five, by designating the last two paragraphs of the section as subsections 5.2. and 5.3., respectively;

On page four, section six, by designating the second paragraph of the section as subsection 6.2. and by redesignating the following subsection accordingly;

On page five, section six, by designating the last paragraph of the section as subsection 6.4.;

On page five, subsection 8.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “Section 8.3”;

On pages five and six, by striking out subdivision 8.2.1. in its entirety and inserting in lieu thereof the following:

“8.3. Criteria and standards for alternative electrical training programs must be adopted by unanimous approval of the Director and the Board of Miner Training, Education and Certification. An alternative electrical training program will not become effective until approved by the Secretary of State as an emergency rule or by the Legislature as an amendment to this rule.” and redesignating the remaining subsection accordingly;

And,

On page six, section nine, by designating the last paragraph of the section as subsection 9.3.”.

§ 64-10-2. Bureau of Employment Programs.

The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section six, article two, chapter twenty-one-a, of this code, modified by the Bureau of Employment Programs to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand seven, relating to the Bureau of Employment Programs (requiring state agencies to revoke or not to grant, issue or renew approval documents with employing units on the bureau’s default list, 96 CSR 1), is authorized.

§ 64-10-3. Division of Forestry.

The legislative rule filed in the State Register on the twenty-second day of June, two thousand six, authorized under the authority of section three-a, article one-a, chapter nineteen, of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand seven, relating to the Division of Forestry (ginseng, 22 CSR 1), is authorized, with the following amendments:

On page two, section three, by striking out “3.1.”;

On page three, by redesignating subdivision 6.1.1. as subsection 6.2. and by redesignating the remaining subsections accordingly;

On page four, section seven, by striking out “7.1.”;

On page four, section eight, by striking out “8.1.”;

On page five, by redesignating subdivision paragraph 9.2.2.1. as subdivision 9.2.2.;

On page five, section ten, by striking out “10.1.”;

On page six, section eleven, by striking out “11.1.;

And,

On page six, subsection 13.2., after the words “Freedom of Information Act” by striking out the remainder of the subsection and inserting in lieu thereof the following: “as having a significant commercial value to the extent permitted by W. Va. Code §29B-1-4(1).”.

§ 64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section twenty-three-a, article two, chapter twenty, of this code, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (special boating rules, 58 CSR 26), is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of December, two thousand six, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the second day of November, two thousand six, relating to the Division of Natural Resources (wildlife disease management, 58 CSR 69), is authorized, with the amendments:

On page 2, subsection 2.3, line eight, after the word “landscape” and the period, by striking the remainder of the subsection and inserting in lieu thereof, the following: “The Director shall, at least annually after the establishment of a containment area, review and evaluate any and all new information relating to wildlife disease epidemiology and surveillance to determine whether any such designation of a containment area should be modified or rescinded and shall report these findings to the Natural Resources Commission. Prior to the establishment of a containment area, the Director shall consult with:

2.3.a. wildlife biologists within the Wildlife Resources Section that are knowledgeable of wildlife diseases;

2.3.b. a Department of Agriculture veterinarian knowledgeable of wildlife diseases;

2.3.c. conservation officers familiar with local and regional landscape features; and

2.3.d. the Natural Resources Commission.”;

And,

One page 3, by striking subsection 4.1 and inserting the following, “4.1. It is illegal to feed cervids or other wildlife in a containment area as determined by the Director and established for the management, control or eradication of chronic wasting disease, bovine tuberculosis, avian influenza or other wildlife diseases. Provided, that song and insectivorous birds may be fed so long as the person or persons feeding the same shall not do so in a manner that causes a congregation of cervids or other wildlife or in a manner that said person or persons reasonably should have known would cause a congregation of cervids or other wildlife. Provided further, that captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources.”.

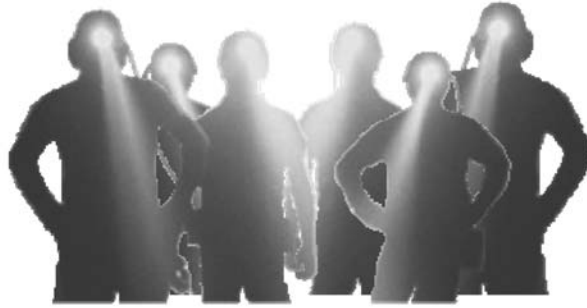
(e) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the second day of November, two thousand six, relating to the Division of Natural Resources (public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources, 58 CSR 70), is authorized, with the following amendments:

On page one, subsection 2.2., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page two, section three, by striking out “3.1.”;

On page two, subsection 2.18., by striking out the word “shall” and inserting in lieu thereof the word “may”;

And,
On page two, by striking out subsection 3.2. in its entirety.



**MAY-JULY 2006 SELF-CONTAINED SELF-RESCUERS
INSPECTION INVENTORY REPORT**

**Report to the Director of the
Office of Miners' Health, Safety and Training**

Randall J. Harris, David Kessler, and Ericka Belcher

October 22, 2006



 West Virginia Office of Miners Health Safety and Training

May-July 2006 Self-Contained Self-Rescuers Inspection Inventory Report

**Report to the Director of the
Office of Miners' Health, Safety and Training**

Randall J. Harris, David Kessler and Ericka Belcher

October 25, 2006

West Virginia Code §56-4-4 required the Director of the Office of Miners Health Safety and Training (OMHS&T) to issue instructions to all underground mine operators and independent contractors for reporting on the results of their 90-day self-contained self-rescuer (SCSR) inspections. The first reporting period ended July 31 with reports due no later than August 15, 2006. This report summarizes the results and lessons learned. Instructions were in letter provided to all holders of underground, independent control and preparation permits in the state by Acting Director Jim Dean on July 6, 2006.

The data collected represents the first attempt at a comprehensive SCSR reporting system. As with anything the first time there were minor problems in the reporting process. However, even with these problems the response of the permit holders was almost universally supportive of the effort. At one point everyone associated with the mining permits places their lives in the hands of their SCSR. If an accident occurs the SCSR may well make the difference between them getting home or not. All those who interacted with the OMHS&T on this report understood that this was an important activity and treated it as such. Our thanks go out to the hundreds of people who participated in this effort.

INSPECTION REPORTING PROCESS

Permit holders were instructed to follow the manufacturer's required 90-day inspection procedures. There were to be reported in the form of a Microsoft Excel spreadsheet which was provided on OMHS&T web page (www.wvminesafety.org) and a hard copy was included in the transmitter letter.

They were instructed to provide:

State Mine/Contractor ID #	The current ID number issued by OMHS&T
Make/Model of SCSR	CSE SR100 or Ocenco M20 or Ocenco EBA6.5 or Drager OxyK
Serial Number	The manufacturer's serial number for the particular SCSR
Manufacturer Date	The date indicated on the unit by the manufacturer

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In-Service Date	The date the unit was issued by the mine or contractor to a miner or placed in a cache
Removal Date	The date the unit was removed from service
Removal Reason	Missing (stolen/lost) or Used or failed (complete appropriate field) or expired (reached end-of-life date) or reassigned (list individual in comment field)
Inspection Date	The date the SCSR was inspected during the reporting period
Inspector Name	Name of person inspecting the SCSR
Inspector Certification #	The WV certification number of the inspector (if certified)
Location Assigned	Carried or cached
Location Number	The cache location number corresponding the mine map
Seals Intact	Results of manufacturers required inspection – yes or no
All parts Intact	Results of manufacturers required inspection – yes or no
Indicators Pass	Results of manufacturers required inspection – yes or no
Physical Shape Pass	Results of manufacturers required inspection – yes or no
Shake/Noise Test Pass	Results of manufacturers required inspection – yes or no
Unit Pass	Passed all manufacturers required tests
Comment	Description of observation that caused failure or to whom the SCSR was reassigned

As this was the first time either the permit holders or state had attempted to collect information in this format there were numerous problems with data formatting and communications that are being address through the development of automated reporting system being developed for the OMHS&T by the Governors Office of Technology (GOT). It is hoped to be in place before the next reporting cycle.

The need to reformat data fields and verify information resulted in the delay of this report. The goal is to have these reports competed and posted on the OMHS&T web page within 30 days from the end of each reporting cycle.

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INSPECTION RESULTS

A total of 10,291 SCSRs were reported in this first cycle. One of the problems encountered was inconsistent use of permit numbers. This was compounded by the current OMHS&T information management system that is being revised. Acting Director Jim Dean initiated a review of information management systems in the office that identified several critical needs. One of these was difficulty of existing data bases to share information. This has made it difficult to compare the permit numbers and mine names submitted in the first SCSR report to those in the permit data base. Therefore, it is still being checked if all active permittee's have submitted SCSR reports. This is scheduled to be corrected prior to the next reporting cycle.

Since it was not sure what areas of interest that the report data would highlight it all data reporting formats were not finalized prior to this analysis. When the GOT completes its work standard reports will be available on the website along with the ability to generate custom reports.

For this document only highlights are provided. When the website is complete this data will be searchable.

	CSE SR-100	Ocenco EBA-6.5	Ocenco M-20	Draeger OxyK-Plus	All Totals
INSERVICE					
Total	6,627	3,577	70	17	10,291
Market Share	64.4%	34.8%	0.7%	0.2%	100.0%
Carried	4,144 62.5%	0 0.0%	70 100.0%	17 100.0%	4,231 41.1%
Cached	2,365 35.7%	3,379 94.5%	0 0.0%	0 0.0%	5,744 55.8%
Warehoused	110 1.7%	202 5.6%	0 0.0%	0 0.0%	312 3.0%
Unknown	8 0.1%	0 0.0%	0 0.0%	0 0.0%	8 0.1%
REMOVED					
Total	272	50	0	0	322
Removal Rate	4.1%	1.4%	0.0%	0.0%	3.1%
Moisture Indicator	57 21.0%	0 0.0%	0 0.0%	0 0.0%	57 17.7%
Temp Indicator	63 23.2%	0 0.0%	0 0.0%	0 0.0%	63 19.6%
Age	33 12.1%	30 60.0%	0 0.0%	0 0.0%	63 19.6%
Damaged Case	61 22.4%	5 10.0%	0 0.0%	0 0.0%	66 20.5%
Damaged Seals	27 9.9%	0 0.0%	0 0.0%	0 0.0%	27 8.4%
Failed ASMD Test	32 11.8%	0 0.0%	0 0.0%	0 0.0%	32 9.9%
Missing security seal	0 0.0%	2 4.0%	0 0.0%	0 0.0%	2 0.6%
Pressure gauge	0 0.0%	13 26.0%	0 0.0%	0 0.0%	13 4.0%
MISSING					
Total	24 80.0%	6 20.0%	0 0.0%	0 0.0%	30 100.0%
Removal Rate	0.4%	0.2%	0.0%	0.0%	0.3%

The CSE Corporation SR-100 was the most popular SCSR in use during the reporting period with 64.4 percent of the units in service. The 4,144 SR-100 carried represent all but 87 of the 4,231 person-wearable SCSRs in service in the state with an addition 2,365 SR-100s stored in

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caches in the mines or on equipment. Likely due the added wear associated with the person-wearable units, the SR-100 had the highest removal rate of 4.1 percent of those SR-100s in service. The leading single cause of removal was activation of temperature indicator. This was followed the by impact related causes damaged cases, damaged seals, activated moisture indicators and noise (acoustic solids movement detector testing). During this period some 33 units reached the prescribed end of their ten year service life. In addition, there were 24 units reported missing.

Ocenco Inc was the next most widely used SCSR among West Virginia miners with 3,647 units between its EBA-6.5 and M-20 models representing 34.5 percent of the SCSRs in service in the state. The EBA-6.5 is exclusively cached in the mine or on equipment while the M-20 is exclusively person-wearable. As might be expected for cached units the removal rate from impact related damage was considerably lower with only 7 units being report as removed for case damage. Twenty-six of those removed were the result of reading on the pressure gauges which could have been the result of exposure to excessive temperature or problems with the regulator and seals. The largest reason for removal was reaching the prescribed end of service life, ten years if cached and 5 years if carried. In addition there were 6 units reported missing.

Draeger Inc's OxyK Plus represents the smallest portion of SCSRs in use during the period. While there were no reported removals, the small numbers do not provide a meaningful comparison of ruggedness.

LESSONS LEARNED FOR SCSR USERS

The number difference in removal rates between person-wearable and cached units, while expected, is problematic. When taken in conjunction with anecdotal evidence from interviews with miners it indicates a lack of proper handling of the SCSR subjecting them to a higher than expected number of impact related damage.

The number of units that have been removed as the result of temperature related indicator also points to issues with handling. The SR-100 have a temperature threshold of 130° Fahrenheit before the indicator activated while exposure of Ocenco units to temperatures over 160°F rupture of the protective frangible disc causing safe depressurizing of the oxygen bottle. The fact that a significant number of both units were exposed such that they were removed indicates lack of proper handling as well.

Since people who depend on these units must be assumed to no be abusing them on purpose the logical explanation is they are not aware they are risking their lives by improper handling of their SCSRs.

The OMHS&T has been looking closely at SCSR training and in the recently promulgated rules of personal safety equipment it stipulated that training on the care and use must be included in all required SCSR training. This was based on anecdotal evidence presented by MSHA, NIOSH, manufacturers and miners to the Mine Safety Technology Task Force and included in their June 29, 2006 report to the Director.

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Comments have been given to MSHA and NIOSH staff working on revised SCSR training that individual handling and use of the SCSR must be included in any training. It is recommended that you review your company training and emphasis to these issues in your current materials.

LESSONS LEARNED FOR THE INSPECTION REPORTING

There is a need for definition of qualifications for the individual doing the 90-day inspections. Conversations with those doing these inspections indicated that the manufacturer's instructions are not specific enough to allow consistent determination of removal for subjective indicators. There is little disputing if a gauge reads zero or indicator is obviously blood red. However, when does case abrasion become removable damage? How hard must you shake a chemical unit to know the acoustic solid movement detector has successfully passed a unit? OMHS&T will work with manufacturers and federal agencies to ensure that adequate materials are available for SCSR those doing the 90-day inspections.

An automated system to ensure consistent usage of terms is needed to speed data processing. The number of SCSRs in the state will likely more than triple as orders pending for caches begin to arrive. If the time spent cleaning up data for these initial 11,000 some SCSR would be impractical for 35,000. OMHS&T will convene a focus group of mine safety directors to baseline the specifics of the system.

Also, several firms are marketing tools to ease the inspection and inventory of SCSRs in the mines, OMHS&T will work with these and other private sector firms interested to ensure seamless transfer of data of in-mine systems.

As the data quality improves, individual mine reports will be provided to OMHS&T inspectors so they can begin spot validating the inspection results.

WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #5

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2006 JUN 13 P 3 41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: Board of Coal Mine Health and Safety TITLE NUMBER: 36

CITE AUTHORITY: 22A-6-1

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code Sec. 22-6-4

AMENDMENT TO AN EXISTING RULE: YES XX NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 44

TITLE OF RULE BEING AMENDED: Mine Rescue Requirement for the Office of Miners' Health, Safety and Training

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE THE
EFFECTIVE DATE OF THIS RULE IS July 13, 2006

Kenneth Delesch
Authorized Signature

TITLE 36

Legislative Rule

BOARD OF COAL MINE HEALTH AND SAFETY

Series 44

MINE RESCUE REQUIREMENTS FOR THE OFFICE OF MINERS' HEALTH SAFETY AND TRAINING

§36-44-1. General.

1.1. Scope—This rule governs mine rescue requirements for the Office of Miners' Health Safety and Training. This rule in no way should be construed as relieving mine operators from their requirement to either have their own mine rescue team or contract coverage.

1.2. Authority.—W. Va. Code 22-6-4.

1.3. Filing Date.—June 13, 2006.

1.4. Effective Date.—July 13, 2006.

§36-44-2. Mine Rescue Requirements for the Office of Miners' Health Safety and Training.

2.1. The Director shall develop a mine emergency operation plan for the mine rescue teams that represent the Office of Miners' Health Safety and Training that would include but is not limited to the following criteria:

(a) Establish and maintain 2 mine rescue stations within the OMHS&T; one located in the North area of the State and one located in the South area of the State, at locations determined by the Director.

(b) To establish one (1) fully trained mine rescue team per each OMHS&T's regional office;

(c) The members assigned to the mine rescue and recovery work may be inspectors, instructors or other qualified employees of the office as the director deems necessary. The director shall employ additional employees as he deems necessary to fulfill the requirement of this section;

(d) To provide the necessary fully equipped mine rescue vehicles for each OMHS&T mine rescue station that would include but is not limited to cellphones, satellite telephone, landline telephones (teleconferencing), on-site radios and fax/copy machines, computers with mine mapping software (CAD) and modems; and any other equipment deemed necessary by the Director.

(e) To purchase new additional mine rescue equipment including but is not limited to mask mounted radio connections and permissible radios for underground wireless communications; new lifeline/communications reels with a "down hole" speaker microphone system; new additional handheld gas detectors and infra-red and electrochemical gas monitoring equipment, gas sampling tubing, satellite telephones and four channels of seismic inputs (geophones); and any other equipment as deemed necessary by the Director.

2.2. As used in this section, mine rescue teams shall be considered available where teams are capable of presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity.

(a) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(b) The agency's mine rescue team members shall be considered "duly qualified emergency service worker" as defined in W. Va. Code §15-5-11.

(c) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(d) Each member of a mine rescue team must have been employed in an underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(e) An applicant for initial agency mine rescue training shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to perform mine rescue work. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the director.

(f) Upon completion of the initial training, all agency's mine rescue team members shall receive at least ninety-six (96) hours of refresher training annually.

§36-44-3. Physical Requirements.

3.1. (a) Any person making application to participate in initial agency mine rescue training shall have had an examination by a physician, who shall certify that such applicant is physically fit to perform mine rescue and recovery work while wearing a self-contained oxygen breathing apparatus. The physical examination shall be completed within thirty (30) days prior to scheduled initial training.

(b) A physician shall fill out a form prescribed by the Director, and such form shall be presented to the Mine Rescue Training Instructor five (5) days prior to scheduled initial training.

§36-44-4. Agency Mine Rescue Team Members Compensation; Worker's Compensation.

4.1. (a) Agency mine rescue team members are to be paid a minimum of \$250 per month, with the rate thereafter to be determined annually by the Director.

(b) When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of the agency's mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor and paid according to the following criteria:

Time and half—when on standby at hotel/home

Double time—when available on the surface

Triple time—when under apparatus underground

The Director will invoice the operator and ensure proper distribution to the individual agency mine rescue team members.

(c) During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

COMMITTEE SUBSTITUTE FOR
Senate Bill No. 68

(By Senators Tomblin, Mr. President, and Caruth, By Request of the Executive)
[Originating in the Committee on Finance; reported February 15, 2007.]

A BILL to amend and reenact §22A-1-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §22A-2-4a; to amend and reenact §22A-2-5 of said code; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-7; and to amend said code by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all relating generally to coal mine health and safety; authorizing Director of the Office of Miners' Health, Safety and Training, upon a finding of imminent danger, to issue closure orders for mines under certain circumstances; prohibiting the use of a belt conveyor entry as an intake air course and providing exceptions thereto; providing requirements for the design, construction and inspection of seals and the atmospheric monitoring of sealed areas; prohibiting use of certain seals and providing for requirements for remediation of existing seals under certain circumstances; prohibiting the use of bottom mining and providing exceptions thereto; requiring continuing education for underground mine foremen-fire bosses and setting course requirements; continuing the Mine Safety Technology Task Force; legislative findings; establishing powers and duties of task force; reimbursement; and task force consultation in approval of safety devices.

Be it enacted by the Legislature of West Virginia:

That §22A-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-2-4a; that §22A-2-5 of said code be amended and reenacted; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-7; and that said code be amended by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all to read as follows:

Article 1. Office of Miners' Health, Safety and Training; Administration; Enforcement.

§22A-1-15. Findings, orders and notices.

(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, such the representative shall determine the area throughout which such the danger exists and thereupon shall immediately issue forthwith an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) (e) of this section, to be withdrawn from and to be prohibited from entering such the area until an authorized representative of the director determines that such the imminent danger no longer exists.

All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator or the operator's

agent fixing a reasonable time for the abatement of the violation. If upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the director finds that the violation has not been totally abated, and if the director also finds that the period of time should not be further extended, the director shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) (e) of this section, to be withdrawn from and to be prohibited from entering such the area until an authorized representative of the director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant to subsection (a) of this section, the director shall review the compliance record of the mine.

(1) A review of the compliance record conducted in accordance with this subsection shall, at a minimum, include a review of the following:

- (A) Any closure order issued pursuant to subsection (a) of this section;*
- (B) Any closure order issued pursuant to subsection (b) of this section;*
- (C) Any enforcement measures taken pursuant to this chapter, other than those authorized under subsections (a) and (b) of this section;*
- (D) Any evidence of the operator's lack of good faith in abating violations at the mine;*
- (E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine;*
- (F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and*
- (G) Any mitigating circumstances.*

(2) If, after review of the mine's compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator's disregard for the health and safety of miners, the director shall issue a closure order for the entire mine and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine until a thorough inspection of the mine has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of the shift.

(c) (e) The following persons are not required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

- (1) Any person whose presence in such the area is necessary, in the judgment of the operator or an authorized representative of the director, to eliminate the condition described in the order;*
- (2) Any public official whose official duties require him or her to enter such the area;*
- (3) Any representative of the miners in such the mine who is, in the judgment of the operator or an authorized representative of the director, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such the area is necessary for the investigation of the conditions described in the order; and*
- (4) Any consultant to any of the foregoing persons set forth in this subsection.*

(d) (f) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(e) (g) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or the operator's agent by an authorized representative

of the director issuing such the notice or order and all such the notices and orders shall be in writing and shall be signed by such the representative and posted on the bulletin board at the mine.

(f) (h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(g) (i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making such the finding, order or notice.

(j) *Definitions.—For the purposes of this section only, the following terms have the following meanings:*

(1) *“Unwarrantable failure” means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and*

(2) *“Significant and substantial violation” shall have the same meaning as that established in 6 FMSHRC 1 (1984).*

Article 2. Underground Mines.

§22A-2-4a. Use of belt air.

(a) *Definitions.—For purposes of this section, “belt air” means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.*

(b) Upon the effective date of the enactment of this section, belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: Provided, That if an alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following:

(1) For those operators using belt air pursuant to a ventilation plan approved by the director in accordance with the provisions of section two of this article prior to the effective date of the enactment of this section, the director shall cause an inspection to be made of the mine ventilation system and ventilation equipment. The director may allow the continued use of belt air in that mine if he or she determines that: (i) The use meets the minimum requirements of 30 CFR 75.350(b); and (ii) the use, as set forth in the ventilation plan and as inspected, will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.

(2) For those operators submitting on or after the effective date of the enactment of this section, a ventilation plan proposing the use of belt air to the director pursuant to section two of this article, the director shall immediately upon receipt of the plan give notice of the plan to the representative of the miners in that mine and cause any investigation to be made that the director considers appropriate: Provided, That the investigation shall include a review of any comments on the plan submitted by the representative of miners in the mine. Upon receiving the report of the investigation, the director shall make findings of fact and issue a written decision, incorporating in the decision his or her findings and an order approving or denying the use of belt air pursuant to the terms of the ventilation plan. To approve the use of belt air pursuant to a ventilation plan, the director shall, at a minimum, determine that: (i) The operator’s proposed use of belt air meets the minimum requirements of 30 CFR 75.350(b); and (ii) approval of the proposed use of belt air will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.

(3) The interim use of belt air shall be accurately reflected in operator’s plan of ventilation, as approved by the director in accordance with the provisions of section two of this article.

(c) Upon completion of the independent scientific and engineering review concerning the use of belt air and the composition and fire retardant properties of belt materials in underground coal mining by the technical study panel created pursuant to the provisions of 30 U. S. C. §963 and the Secretary of the United States Department of Labor’s corresponding report to Congress pursuant to the review, the Board of Coal Mine Health and Safety shall, within thirty days of the Secretary of Labor’s report to Congress, provide the Governor with its recommendations, if any, for the enactment, repeal or amendment of any statute or rule which would enhance the safe ventilation of underground mines and the health and safety of miners: Provided, That at least sixty days after the Secretary of Labor’s report to Congress, the

Board of Coal Mine Health, Safety and Training shall promulgate emergency rules regulating the use of belt air in light of that report: Provided, however, That the provisions of subsections (a) and (b) of this section shall expire and no longer have any force and effect upon the filing of such emergency rules.

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) *On or after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, a professional engineer registered with the Board of Registration for Professional Engineers pursuant to article thirteen, chapter thirty of this code shall certify the design of all new seals as meeting the criteria established by the director. Every seal design shall have the professional engineer's certificate and signature, in addition to his or her seal, in the following form:*

"I the undersigned, do hereby certify that this seal design is, to the best of my knowledge, in accordance with all applicable requirements under state and federal law, rules and regulations.—P.E."

(d) *On or after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, the director shall approve the construction of all new seals in accordance with rules authorized in this section. The construction shall also be:*

(1) *Certified by the mine foreman-fire boss of the mine as being in accordance with the design certified by a professional engineer pursuant to subsection (c) of this section; and*

(2)(A) *Constructed of solid concrete blocks and in accordance with the other provisions of 30 CFR 75.335(a)(1); or*

(B) *Constructed in a manner that the director has approved as having the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1).*

(e) *On or after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, the operator shall inspect the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.*

(f)(1) *In all mines containing workings sealed using seals constructed in accordance with the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine, Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the*

capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.

(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in subdivision (1) of this subsection is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance with the protocols and atmospheric measurement plan established pursuant to subsection (e) of this section.

(g) Upon the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in subsection (c) of this section shall be obtained by the operator from a professional engineer and the mine foreman-fire boss for the plan design and plan implementation, respectively.

(h) No later than sixty days after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of section four, article six of this chapter to implement and enforce the provisions of this section.

(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. § 811, as amended by section ten of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within thirty days, provide the Governor with his or her recommendations, if any, for the enactment, repeal or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners.

Article 7. Board of Miner Training, Education and Certification.

§22A-7-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification under this article or any other provision of this code. Such The specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the director may by rule further subdivide the classification classifications for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of preemployment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis: Provided, That the standards shall be consistent with the provisions of section seven of this article. Prior to issuing said the standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. Such The education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided for in this article or any other provision of this code.

(f) The board may also, from time to time, conduct such any hearings and other oversight activities as may be required to ensure full implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the director of the office of miners' health, safety and training Office of Miners' Health, Safety and Training.

(h) The board may, upon its own motion or whenever requested to do so by the director, deem consider two certificates issued by this state to be of equal value or deem consider training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions of this code.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

(a) An existing underground mine foreman-fire boss certified pursuant to this article shall complete the continuing education requirements in this section within two years from the effective date of this section and every two years thereafter. An underground mine foreman-fire boss certified pursuant to this article on or after the effective date of this section shall complete the continuing education requirements in this section within two years of their certification and every two years thereafter. The continuing education requirements of this section may not be satisfied by the completion of other training requirements mandated by the provisions of this chapter.

(b) In order to receive continuing education credit pursuant to this section, a mine foreman-fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course approved by the board and taught by a qualified instructor approved by the director. The mine foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The mine foreman-fire boss shall submit documentation to the office certified by the instructor that indicates the required continuing education has been completed prior to the deadlines set forth in this subsection: Provided, That a mine foreman-fire boss may submit documentation of continuing education completed in another state for approval and acceptance by the board.

(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

- (1) Selected provisions of this chapter and 30 U. S. C. §801, et seq.;
- (2) Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;
- (3) The responsibilities of a mine foreman-fire boss;
- (4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training, the Board of Coal Mine Health and Safety and the Board of Miner Training, Education and Certification;
- (5) A review of fatality and accident trends in underground coal mines; and
- (6) Other subjects as determined by the Board of Miner Training, Education and Certification.

(e) The board may approve alternative training programs tailored to specific mines.

(f) Failure to complete the requirements of this section shall result in suspension of a mine foreman-fire boss certification pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the board of appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, That an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the state, based on demand, for individuals possessing mine foreman-fire boss cer-

tifications who are not serving in a mine foreman-fire boss capacity: Provided, That the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked pursuant to this section.

Article 11. Mine Safety Technology.

§22A-11-1. Legislative findings, purposes and intent.

The Legislature hereby finds and declares:

(1) That the first priority and concern of all persons in the coal mining industry must be the health and safety of its most precious resource—the miner;

(2) That in furtherance of this priority, the provisions of article two of this chapter are designed to protect the health and safety of this state's coal miners by requiring certain minimum standards for, among other things, certain health and safety technology used by each underground miner;

(3) That the proper implementation of this technology in West Virginia's underground mines would benefit from the specialized oversight of persons with experience and competence in coal mining, coal mine health and safety and the expanding role of technology; and

(4) That, in furtherance of provisions of this section, it is the intent of the Legislature to create a permanent task force which, on a continuous basis, shall evaluate and study issues relating to the commercial availability and functional and operational capability of existing and emerging technologies in coal mine health and safety, as well as issues relating to the implementation, compliance and enforcement of regulatory requirements governing the technologies.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

(a) The Mine Safety Technology Task Force, created and existing under the authority of the director pursuant to the provisions of section six, article one of this chapter, is continued as provided by this article.

(b) The task force shall consist of nine members who are appointed as specified in this section:

(1) The Governor shall appoint, by and with the advice and consent of the Senate, three members to represent the viewpoint of operators in this state. When these members are to be appointed, the Governor shall request from the major trade association representing operators in this state a list of three nominees for each position on the task force. All nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with the list, a summary of the qualifications of each nominee. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The Governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the Governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the task force. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each position on the board. The nominees shall have a background in coal mine health and safety.

(3) The Governor shall appoint, by and with the advice and consent of the Senate, one certified mine safety professional from the College of Engineering and Mineral Resources at West Virginia University;

(4) The Governor shall appoint, by and with the advice and consent of the Senate, one attorney with experience in issues relating to coal mine health and safety; and

(5) The ninth member of the task force is the director, or his or her designee, who shall serve as chair of the task force. The director shall furnish to the task force any secretarial, clerical, technical, research and other services that are necessary to the conduct of the business of the task force.

(c) Each appointed member of the task force shall serve at the will and pleasure of the Governor.

(d) Whenever a vacancy on the task force occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each vacancy shall be requested by and submitted to the Governor within thirty days after the

vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the task force is vacant.

(e) Each member of the task force shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the Office of Miners' Health, Safety and Training. An employer shall not prohibit a member of the task force from exercising leave of absence from his or her place of employment in order to attend a meeting of the task force or a meeting of a subcommittee of the task force, or to prepare for a meeting of the task force, any contract of employment to the contrary notwithstanding.

§22A-11-3. Task force powers and duties.

(a) The task force shall provide technical and other assistance to the office related to the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, as amended and reenacted during the regular session of the Legislature in the year two thousand six, and requirements for other mine safety technologies.

(b) The task force, working in conjunction with the director, shall continue to study issues regarding the commercial availability, the functional and operational capability and the implementation, compliance and enforcement of the following protective equipment:

(1) Self-contained self-rescue devices, as provided in subsection (f), section fifty-five, article two of this chapter;

(2) Wireless emergency communication devices, as provided in subsection (g), section fifty-five, article two of this chapter;

(3) Wireless emergency tracking devices, as provided in subsection (h), section fifty-five, article two of this chapter; and

(4) Any other protective equipment required by this chapter or rules promulgated in accordance with the law that the director determines would benefit from the expertise of the task force.

(c) The task force shall on a continuous basis study, monitor and evaluate:

(1) The potential for enhancing coal mine health and safety through the application of existing technologies and techniques;

(2) Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;

(3) Emerging technological advances in coal mine health and safety; and

(4) Market forces impacting the development of new technologies, including issues regarding the costs of research and development, regulatory certification and incentives designed to stimulate the marketplace.

(d) On or before the first day of July of each year, the task force shall submit a report to the Governor and the Board of Coal Mine Health and Safety that shall include, but not be limited to:

(1) A comprehensive overview of issues regarding the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, or rules promulgated in accordance with the law;

(2) A summary of any emerging technological advances that would improve coal mine health and safety;

(3) Recommendations, if any, for the enactment, repeal or amendment of any statute which would enhance technological advancement in coal mine health and safety; and

(4) Any other information the task force considers appropriate.

(e) In performing its duties, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, radiocommunication and telemetry experts and relevant state and federal regulatory personnel.

§22A-11-4. Approval of devices.

Prior to approving any protective equipment or device that has been evaluated by the task force pursuant to the provisions of subsection (b), section three of this article, the director shall consult with the task force and review any applicable written reports issued by the task force and the findings set forth in the reports and shall consider the findings in making any approval determination.

[Additional material supplied by Mr. Roberts follows:]

INJURY AND FATALITY STATISTICS BY UNION STATUS

CY	Underground Coal Injuries	Surface Coal Injuries	Total Coal Injuries	Union Under-ground Coal Injuries	Union percent of under-ground injuries	Union Under-ground Representation	Union Surface Coal Injuries	Union percent of surface injuries	Union surface representation	Total Union Coal Injuries	Total Union % of Injuries	Total union representation
Injuries:												
2002	4,192	1,847	6,039	1,047	25.0%	35.2%	413	22.4%	26.0%	1,461	24.2%	31.3%
2003	3,647	1,521	5,168	1,061	29.1%	34.6%	276	18.1%	25.4%	1,338	25.9%	30.5%
2004	3,709	1,420	5,129	1,116	30.1%	33.7%	274	19.3%	22.4%	1,391	27.1%	28.9%
2005	3,732	1,450	5,182	1,068	28.6%	32.6%	207	14.3%	20.5%	1,276	24.6%	27.5%
2006	3,700	1,467	5,167	969	26.2%	N/A	226	15.4%	N/A	1,195	23.1%	N/A
2007	302	118	420	101	33.4%	N/A	22	18.6%	N/A	123	29.4%	N/A
Totals	19,282	7,823	27,105	5,362	27.8%	.....	1,418	18.1%	.....	6,783	25.0%	.....
Fatalities:												
2002	17	10	27	3	17.6%	35.2%	0	0.0%	26.0%	3	11.1%	31.3%
2003	17	13	30	6	35.3%	34.6%	0	0.0%	25.4%	6	20.0%	30.5%
2004	17	11	28	4	23.5%	33.7%	1	9.1%	22.4%	5	17.9%	28.9%
2005	16	6	22	4	25.0%	32.6%	0	0.0%	20.5%	4	18.2%	27.5%
2006	39	8	47	5	12.8%	N/A	1	12.5%	N/A	6	12.8%	N/A
2007	3	1	4	0	0.0%	N/A	0	0.0%	N/A	0	0.0%	N/A
Totals	109	49	158	22	20.2%	.....	2	4.1%	.....	24	15.2%	.....

Sources: Mine Safety and Health Administration (injury and fatality data); Energy Information Administration (union representation data).

[Additional material supplied by Mr. Watzman follows:]

MINE SAFETY IMPROVEMENTS: PROGRESS FACTS

	Progress
Self-contained self-rescuers ...	<ul style="list-style-type: none"> • 78,000 new SCSRs placed into service; • 100,000 additional units to be added.
SCSR training	<ul style="list-style-type: none"> • All 55,000 underground coal miners have and will continue to receive quarterly training; • More than 7,000 training units have been ordered; • More than 50,000 additional units expected.
Emergency evacuation training	<ul style="list-style-type: none"> • All 55,000 underground coal miners have received training on evacuation procedures.
Evacuation aids	<ul style="list-style-type: none"> • Underground coal mines have installed lifelines; • Additional SCSR caches have been placed at fixed distances in escapeways; • Emergency tethers provided to link miners together.
Locating trapped miners	<ul style="list-style-type: none"> • Underground coal mines have implemented systems to track miners while they are in the mine; • New systems are being tested; results expected in 2007; • Pre-accident tracking appears doable; more R&D needed on post-accident tracking systems.
Post accident communication	<ul style="list-style-type: none"> • Underground coal mines have installed redundant communication systems in separate entries; • Awaiting development and approval of wireless systems.
Sealing of abandoned areas ..	<ul style="list-style-type: none"> • Operators required to install seals more than double the strength of those previously installed. • Operators have evaluated existing seals and corrected any defects found. • Seals are being examined visually on a weekly basis.
Refuge chambers/	<ul style="list-style-type: none"> • On February 9, 2007, operators received guidance on means to provide breathable air;
Breathable air	<ul style="list-style-type: none"> • NIOSH study on the efficacy of refuge chambers in underground coal mines will be completed by December 2007.
Rescue Teams	<ul style="list-style-type: none"> • 36 new underground coal mine rescue teams have been added or are planned.

[Internet address to National Mining Association report, “Review of Mine Safety Technology and Training Recommendations” follows:]

http://www.nma.org/pdf/misc/050807—watzman.pdf

[Whereupon, at 12:54 p.m., the committee was adjourned.]

