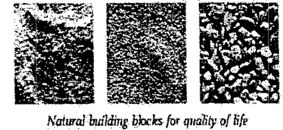
National Lime Association
LIME
The Versatile Chemical



PCA
Portland Cement Association

July 24, 2007

The Honorable George Miller
U.S. House of Representatives
2205 Rayburn House Office Building
Washington DC 20515

Dear Mr. Chairman:

The Miner Health Enhancement Act of 2007 (H.R. 2769) and the Supplemental Mine Improvement and New Emergency Response Act (S-MINER) of 2007 (H.R. 2768) raise serious concerns for a broad spectrum of industries that are strongly committed to safety and health in mines and provide jobs and resources that contribute to America's homes, schools, hospitals, businesses, consumer and industrial products, and roads.

The Mine Improvement and New Emergency Response (MINER) Act, which garnered overwhelming bi-partisan congressional support and was endorsed by labor and industry prior to its passage little more than one year ago, has already contributed to significant success in improving safety. But much remains to be accomplished by both the Mine Safety and Health Administration (MSHA) and the industry to achieve full implementation. Diverting attention and resources away from the critical task of fulfilling the mandates of the MINER Act towards an additional layer of statutory requirements could ultimately undermine the progress that has been made on miner training and other vital objectives of the act.

Since the MINER Act was signed into law on June 15, 2006, MSHA has taken aggressive action to implement its provisions. Industry has invested more than $250 million thus far complying with the act's mandates. Most importantly, mining operations are on track to return to year-over-year improvements in mining safety. To impose further legislation at this time is premature, when the full impact of the original MINER Act cannot yet be comprehensively measured.

The Supplemental Mine Improvement and New Emergency Response Act of 2007 (S-MINER Act) H.R. 2768 and H.R. 2769

- The MINER Act was enacted just last year, but already significant progress has been made in implementing its provisions, and improvement in mine safety is already discernible.

- MSHA has substantially tightened its regulations and its enforcement procedures and the mining industry has made significant changes in operations and equipment to comply with the strengthened requirements.

- The S-MINER Act will prematurely place new and different regulations upon a highly regulated industry that is still working to implement the MINER Act of 2006, causing confusion for the industry and for regulators, increasing the risk of inconsistent inspection and enforcement, and threatening continued progress.

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

- The S-MINER Act unnecessarily alters the well-established and effective roles and responsibilities of MSHA and NIOSH, and introduces organizations unfamiliar with the mining industry and its operations into the safety process.

- The S-MINER Act would overturn and undermine decades of legal precedent established under the Federal Mine Safety and Health Act of 1977.

- The S-MINER Act would impose statutory health standards on the mining industry without benefit of notice and comment rulemaking to develop a rulemaking record that evaluates risk of material impairment of health, as well as technological and economic feasibility. Safety and health standards inherently are risk management functions that properly should remain delegated to MSHA. Modification of such regulations through legislation is unwise, unjustified and can be counterproductive.

- Because MSHA recently substantially increased penalties for violations (in part in compliance with the MINER Act), the additional penalty provisions included in the S-MINER Act are premature, unnecessary and unjustified.

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

- The S-MINER Act takes a one-size-fits-all approach that fails to recognize that mines vary greatly in terms of both safety hazards and appropriate safety procedures and

July 25, 2007

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

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

Dear Chairman Miller and Chairperson Woolsey:

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

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

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

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

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

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

Comments on Behalf of the

Eastern Coal States

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

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

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

July 26, 2007

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

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

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

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

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

These include:

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

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

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

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

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

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

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

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

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

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

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

A Critique of

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

Significant progress has been made in implementing the MINER Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Industrial Minerals Association — North America

July 26, 2007

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

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

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

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

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

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

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

Metal and Nonmetal Mine Safety and Health

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

1311 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20006 | 202-457-0200 | fax 202-457-0287 | www.ima-na.org

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

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

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

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

Miner Health Enhancement Act of 2007

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Thank you for your consideration of our perspective.

Sincerely,

Mark G. Ellis
President

cc: Members of the House Education and Labor Committee

July 26, 2007

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

Dear Congresswoman Woolsey,

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

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

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

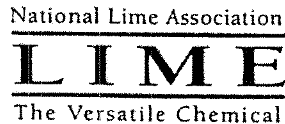
The proposed legislation extends massive coal industry regulatory mandates, penalties, and costs to the suppliers of other aggregates, minerals and metals critical to construction, consumer, national defense, agriculture, environmental safety and health products; even though they have no relationship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

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

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

Sincerely,

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



July 26, 2007

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

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

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

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

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

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

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

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

Adoption of NIOSH RELs as PELs

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

Dust Standards

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

Conclusion

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

Very truly yours,

Hunter L. Prillaman
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July 26, 2007

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

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

Dear Madam Chairwoman:

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

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

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

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Portland Cement Association

July 27, 2007

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

Dear Chairman Miller:

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

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

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

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

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SAND COMPANY

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August 17, 2007

Representative George Miller
2205 Rayburn HOB
Washington, D.C. 20515-0507

Dear Honorable Mr. Miller:

Nugent Sand Company is a 110 year old sand and gravel mining company with a headquarters in Louisville, Kentucky. H.R. 2768, known as the Supplemental Mine Improvement and New Emergency Response Act of 2007, or S-MINER is a premature piece of legislation. I would like to take this time to express my opinion on this proposed piece of legislation.

First, this act is premature in that the MINER act passed in 2006 has not yet had the opportunity to be fully enacted. It takes time for companies as complex as mining, both surface and subsurface alike, to implement such sweeping changes as proposed in 2006. To propose additional changes before the 2006 act is fully in place would subvert those efforts.

Secondly, the safety record for mining has been improving for some years now. Efforts by management and miners at the mine level are beginning to show results. To add additional changes may add roadblocks and stall these proven procedures that are continuing to show results.

Finally, no other industry as complex as the mining industry has been saddled with a one size fits all attempt at regulation. Each and every mine is different with different problems and different safety concerns. To make this act applicable to each mine would cause undo hardship on an industry that runs on a very tight margin for profitability as it is.

I urge you to allow the existing MINER bill to be allowed to work and to oppose efforts to pass the S-MINER bill until it is shown to be needed. If you have any further questions, please contact the government affairs office at the NSSGA at (703) 525-8788. Thank you for your attention.

Sincerely,

Thomas C Nugent III
President

KENTUCKY
CENTENNIAL
BUSINESS

Serving Commerce and Community for 100 Years