

Testimony of
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Before the U.S. Senate, Committee on Health, Education, Labor, and Pensions

April 27, 2010

Chairman Harkin and members of the Senate Committee on Health, Education, Labor, and Pensions, thank you for allowing me to speak to you today regarding the health and safety of America's miners.

My name is Wes Addington and I am an attorney at the Appalachian Citizens' Law Center, a non-profit law firm that represents miners and their families on mine safety and health issues. The Law Center is based in Whitesburg, Kentucky, which is centrally located in the Appalachian coalfields.¹ At the Law Center, I operate the Mine Safety Project, which works to improve safety conditions for miners in the coalfields. Primarily, the Mine Safety Project represents miners that suffer workplace discrimination for making protected safety complaints. In addition to mine safety, we also focus on the area of miners' health where we represent disabled miners afflicted with black lung disease and miners' widows whose husbands have died from the disease.

Unfortunately, I am before you today following the mine explosion in Montcoal, West Virginia, which claimed the lives of 29 miners. The Massey Disaster at Upper Big Branch now becomes synonymous with death in the coal mines like the four recent disasters before it: Crandall Canyon, Darby, Aracoma, and Sago. All were preventable. Five coal mining disasters in barely four years is not only a crisis, it is a national disgrace.

¹ Whitesburg is in Letcher County, site of the 1976 Scotia Mine Disaster, which killed 26 miners and mine inspectors and led to the passage of the Federal Mine Safety and Health Act of 1977.

My father was a Kentucky coal miner and his father before him and all four of my great-grandfathers were miners. Congress' opening declaration in Federal Mine Safety and Health Act of 1977 is that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner."² However, moving forward, the miner should also be our most precious resource in any strategy to improve mine safety in America and prevent future disasters. Miners best know the conditions present in their mines, more so than even inspectors and operators, and can provide invaluable information to the federal regulators working to ensure their protection. Congress realized long ago that "mine safety and health will generally improve to the extent that miners themselves are aware of mining hazards and play an integral part in the enforcement of the mine safety and health standards."³

We have to reach the point in this country that miners, without hesitation, report unsafe conditions. However, recent mine disasters and scores of individual mining fatalities show that this is not happening frequently enough. Unfortunately, in too many mines, miners that complain about unsafe conditions are harassed, interfered with, or even discharged. Many miners feel that those who do complain aren't supported or protected to the degree envisioned under the Mine Act. Understandably then, an experienced and skilled miner will often quit a bad situation and find a new job elsewhere, rather than ask MSHA or the state mine enforcement agency to investigate and remedy the unsafe conditions. Thus, the federal government has to do a better job of publicizing miners' safety rights under current law and increasing their support of

² 30 U.S.C. § 801 et al. ("Mine Act").

³ S. Rep. No. 95-181, 95th Cong. 1st Sess. 36 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977

miners that exercise those rights. In areas, current law is insufficient to properly protect our miners. With that in mind, I make the following recommendations:

Representatives of Miners

Representatives of Miners are working miners that are selected by at least two other miners to represent them in safety and health matters at their mine.⁴ Miners' Representatives are granted special rights under federal law, which are designed to encourage active participation in the enforcement of mandatory health and safety standards and to keep their co-workers apprised of issues that affect their health and safety. Miners' Representatives have the following rights:

- The right to receive a copy of every proposed mandatory health or safety standard or regulation at the time of publication in the Federal Register. Sec. 101(e) of the Mine Act.
- The right to accompany an MSHA inspector during the inspection of the mine, for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Sec. 103(f).⁵
- The right to receive a copy of the notification to the operator for every citation or order issued by MSHA. Sec. 105(a).
- The right to receive a copy of the notification to the operator for every citation that the operator has failed to correct. Sec. 105(b)(1)(A).
- The right to receive a copy of any order, citation, notice or decision that required by the Mine Act to be given to the operator. Sec. 109(b).
- The right to receive a copy of any electrical equipment permit granted. Sec. 305(b).

In view of these special safety rights granted to Miners' Representatives, it's clear that Congress intended them to play a central role in matters of safety and health and be a vital source

⁴ 30 U.S.C. § 813(f).

⁵ "Presence of a representative of miners at opening conference helps miners to know what the concerns and focus of the inspector will be, and attendance at closing conference will enable miners to be fully apprised of the results of the inspection. It is the Committee's view that such participation will enable miners to understand the safety and health requirements of the Act and will enhance miner safety and health awareness." S. Rep. No. 95-181, 95th Cong. 1st Sess. 36 (1977)

of information for the rest of the miners. MSHA has said that the Miners' Representative "plays an important part in our inspection work." MSHA further stated:

Congress put this into the Act because they felt that you [the miner], with your knowledge of the work site, could provide our inspectors with a great deal of useful information. They also felt that if you watched what happened during an inspection you would better understand how the Act's safety and health requirements work.

In fact, MSHA recommended that every shift have a Miners' Representative available.⁶

Yet, with all the inherent safety advantages the Miners' Representative system offers to miners, it is shockingly underutilized. A Freedom of Information Act response revealed, in 2008, that more than 98% of the 249 coal mines in eastern Kentucky's District 6 did not have a Miners' Representative.⁷ One reason for the lack of Miners' Representatives is that miners are often interfered with or at least discouraged by the operator if they show interest in becoming a Miners' Representative. One of our current clients was discharged for becoming a Miners' Representative at his mine. Additionally, MSHA does not sufficiently promote or encourage miners to become Miners' Representatives.

Thus, I would implore MSHA to devote special attention towards emphasizing and encouraging miners to become Miners' Representatives. Far too many miners aren't even aware that they can designate one of their co-workers to travel with inspectors during inspections and receive copies of all citations, orders, and notices issued to the operator. I would encourage Congress to consider a change in the law to require a Miners' Representative be designated at every mine on each shift to ensure the safety protections gained through this system.

⁶ A Guide To Miners' Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977. U.S. Department of Labor, MSHA (2000).

⁷ The FOIA request was made by Dr. Celeste Monforton for every mine in the country with more than 5,000 employee hours.

Miners' Rights Training

Congress envisioned a robust program to train the nation's miners in the duties of their occupations, which includes thorough training of miners as to their statutory rights. But, the present program has systemic shortcomings.⁸ The result is that a large number of miners do not have a thorough understanding of their statutory rights and as a consequence they are unable to exercise such rights. After completing the required 40-hour training for new underground miners in Kentucky myself, I realized that the portion of the training on miners' rights was woefully inadequate if we expect miners to actively participate in enforcement of health and safety standards at their mines.

Training miners as to their statutory rights is an integral part of the Mine Act's requirements for health and safety training. For example, for new underground miners:

Such training shall include instruction in the statutory rights of miners and their representatives under this Act, use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned.⁹ (emphasis added).

Similarly, for new surface miners,

Such training shall include instruction in the statutory rights of miners and their representatives under this Act, use of the self-rescue device where appropriate and use of respiratory devices where appropriate, hazard recognition, emergency

⁸ The bulk of my submitted testimony on miners' rights training was submitted to MSHA as part of Petition for Rulemaking in 2008. We had asked MSHA to make all of the changes recommended in this section of my testimony as they are able under their rulemaking authority. MSHA denied the Petition in full. For example, in response to a request that all miners be provided with a copy of MSHA's "A Guide To Miners' Rights and Responsibilities Under the Federal Mine Safety and Health Act of 1977," the agency stated that the handbook "is available to miners on MSHA's website." April 8, 2008 Letter from Acting Assistant Secretary, Richard E. Stickler. Anyone who has ever viewed MSHA's complicated website would understand that this was essentially non-responsive.

⁹ 30 U.S.C. § 825(a)(1).

procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned.¹⁰ (emphasis added).

Importantly, the Mine Act also requires that all miners receive at least eight hours of refresher training annually.¹¹

Federal Regulations set forth requirements for training and retraining of underground and surface miners, including training as to statutory rights. Part 48 requires that miners receive such statutory rights training only if they are new miners, and to a lesser extent, if they are experienced miners who are newly employed by an operator, transferring to the mine, or returning to a mine after an absence of 12 months or more. Part 48 does not require that miners must receive statutory rights training during their annual refresher training.¹²

In passing the Mine Act, Congress realized that miners must play a crucial role in maintaining a safe and healthy workplace:

If our national mine safety and health program is to be truly effective, miners will have to play an active part in the enforcement of the Act. The Committee is cognizant that if miners are to be encouraged to be active in matters of safety and health, they must be protected against any possible discrimination which they might suffer as a result of their participation.¹³

Because miners know the day-to-day work conditions as well as or better than anyone, obviously they should be encouraged to insist on maintaining a safe and healthy workplace. They are in a unique position to monitor workplace conditions when inspectors are absent. However, in my experience many miners do not know that they can, under the law, voice concerns about workplace health and safety, refuse to perform unsafe work, review and give input to many aspects of an operator's plans for mining, or speak with MSHA inspectors and

¹⁰ 30 U.S.C. § 825(a)(2).

¹¹ 30 U.S.C. § 825(a)(3).

¹² 30 C.F.R. part 48.

¹³ S. Rep. No. 95-181, 95th Cong. 1st Sess. 36 (1977)

investigators without retaliation. Many miners do not realize that they may designate a representative to perform numerous functions under the Mine Act, and that such a representative need not necessarily be affiliated with a labor union.

Even if miners have some understanding of their statutory rights, they will not exercise those rights for fear of retaliation. They often lack confidence in MSHA's ability to protect them from retaliation, and rarely have anywhere else to turn for help. The upshot of this dynamic is that miners who find themselves working in unsafe or unhealthy conditions usually are silent about the unsafe conditions or find work at another mine, rather than speak out and risk retaliation, which can result in the assignment of undesirable work, threats from management or outright discharge. I've represented miners that have been fired for complaining about unsafe equipment and refusing to perform unsafe work. I've also represented a miner that was illegally suspended by the operator for not having required training for which the operator was actually responsible to provide.¹⁴

Thus, to meet Congress's goals under the Mine Act, miners need more robust and more frequent training of their statutory rights. To remedy the problems outlined above, MSHA must change not only the frequency of miners' statutory rights training, but also the quality of and methods by which miners receive such training.

As to the issue of frequency of statutory rights training, as noted above, MSHA requires statutory rights training under Part 48 primarily only for new miners. This obviously presents a problem, because even if new miners received the most dynamic statutory rights training, such

¹⁴ "No miner who is ordered withdrawn from a coal or other mine... shall be discharged or otherwise discriminated against because of such order; and no miner who is ordered withdrawn from a coal or other mine... shall suffer a loss of compensation during the period necessary for such miner to receive training and for an authorized representative of the Secretary to determine that such miner has received the requisite training." 30 U.S.C. § 104(g)(2).

knowledge fades over time. A miner may not need to exercise his or her statutory rights until several years into a mining career. At that juncture, if such miners have had relevant training only at the outset of their careers, they often do not know their statutory rights well at all and cannot protect themselves. An obvious solution to this dilemma is to require statutory rights training in annual refresher training.

There should also be changes in the methods by which miners receive statutory rights training, and the substance and quality of that training. Operators and management personnel should not be permitted to provide any of the required statutory rights training to miners. There is simply too great a conflict of interest to permit mine operators to conduct statutory rights training. Operators have incentive to downplay the expansiveness and importance of these rights, the key role which Congress envisioned miners playing in regulation of the workplace, and the particulars of how miners can most effectively and fairly exercise such rights in the face of operator obstinacy and wrongdoing. Instead, miners should receive statutory rights training only from trainers who are independent of mine operators, such as trainings provided by state mine safety agencies.

Additionally, the training should delineate each of the following statutory rights of coal miners and/or miners' representatives:

- Protection against discrimination for exercising any rights under the Mine Act
- How-to's of naming a miners' representative for the various functions a representative can serve under the Mine Act and its implementing regulations
- Participation in inspections
- Reporting and notifying inspectors of violations and imminent dangers, and requesting inspections
- Pay for being idled by withdrawal order
- Contesting enforcement actions
- Participation in investigations where dangerous conditions cannot be corrected with existing technology
- Review of imminent danger orders

- Participation in cases before Federal Mine Safety Health Review Commission that affect the miner
- Part 48 training rights, including:
 - Training during working hours
 - Pay while receiving training
 - Receiving training records from operator
 - Protection from discrimination and loss of pay for lack of training
 - Review of all types of Part 48 training plans
- Free examinations to ascertain exposure to toxic materials or harmful agents
- Request of Department of Health and Human Services to study/research substance in mine environment for toxicity, or whether physical agents/equipment within mine are dangerous
- Availability of chest x-rays free of charge, including explanation of intervals when such x-rays are to be made available
- Transfer to less dusty atmosphere upon black lung diagnosis
- Review and comment upon/objection to proposed standards, including legal challenges to proposed standards
- Request to modify application of a certain safety standard at a mine, and participation in MSHA's decision when operator requests such a modification
- Right to access information (recordings, findings, reports, citations, notices, orders, etc.) within MSHA and Department of Health and Human Resources
- Observation of operator's monitoring of miner's exposure to toxics and other harmful agents, and access to records of exposure and information about operator abatement in cases of overexposure
- Access to operator's accident records and reports
- Notice of MSHA proposed civil penalty levied against operator
- Operator posting of MSHA orders, citations, notices, etc., as well as receipt of same by miners' representative
- Review of roof control plan and instruction in revision to such plan
- Review of mine map illustrating roof falls
- Notification of and instruction on escape from area where ground failure prevents travel out of the section through the tailgate side of a longwall section
- Review of records of examinations and reports (pre-shift examinations, weekly examinations for hazardous conditions, weekly ventilation examinations, daily reports of mine foremen and assistant mine foremen)
- Review of records of electrical examinations and maps showing stationary electrical installations
- Review of underground mine maps
- Operator's notification of submission of new ventilation plan or revision to existing ventilation plan, review of existing ventilation plan, comment upon proposed ventilation plan and any proposed revisions, and instruction from operator on ventilation plan's provisions
- Review of records of examination of main mine fan
- Review of records of examination of methane monitors
- Review of records of torque/tension tests for roof bolts

- Review of records of tests of ATRS roof support/structural capacity
- Special instruction when rehabilitating areas with unsupported roof
- Operator posting of escapeway maps and notification of changes to escapeways
- Participation in escapeway drills
- Posting and explanation of procedures to follow when mining into inaccessible areas
- Review of records of diesel equipment fire suppression systems, fuel transportation units, and underground fuel storage facilities, as well as records of maintenance of diesel equipment and training records of those operating diesel equipment
- Review and comment upon emergency response plans
- Any other rights set forth in either statute or regulation

This additional training would highlight to miners that they are expected to exercise their statutory rights. A more informed and empowered miner workforce would decrease the odds that conditions in a mine could deteriorate to the point that a mine disaster could occur.

Pattern of Violations

In response to the Scotia Mine Disaster in Letcher County, Kentucky, which killed 23 miners and 3 mine inspectors in 1976, Congress sought to address chronic and repeat violators and prevent operators from continually piling up citations for dangerous conditions. The result was section 104(e) of the Mine Act which substantially increased the penalties for any operator that has a “pattern of violations.”¹⁵ It’s clear from the legislative history that Congress believed the “pattern of violations” provision would be a strong enforcement tool to go after the worst violators:

Section [104(e)] provides a new sanction which requires the issuance of a withdrawal order to an operator who has an established pattern of health and safety violations which are of such a nature as could significantly and substantially contribute to the cause and effect of mine health and safety hazards. The need for such a provision was forcefully demonstrated during the investigation by the Subcommittee on Labor of the Scotia mine disaster.... That investigation showed that the Scotia mine, as well as other mines, had an inspection history of recurrent violations, some of which were tragically related to the disasters, which the existing enforcement scheme was unable to address. The Committee's intention is to provide an effective enforcement tool to protect

¹⁵ 30 U.S.C. § 814(e).

miners when the operator demonstrates his disregard for the health and safety of miners through an established pattern of violations.¹⁶

They also believed it would send a strong signal:

The Committee believes that this additional sequence and closure sanction is necessary to deal with continuing violations of the Act's standards. The Committee views the [104(e)(1)] notice as indicating to both the mine operator and the Secretary that there exists at that mine a serious safety and health management problem, one which permits continued violations of safety and health standards. *The existence of such a pattern, should signal to both the operator and the Secretary that there is a need to restore the mine to effective safe and healthful conditions and that the mere abatement of violations as they are cited is insufficient.*¹⁷ (emphasis added).

Finally, they felt that they provided flexibility, so a rigid standard wouldn't constrain the agency's use of the provision:

It is the Committee's intention to grant the Secretary in Section [104(e)(4)] broad discretion in establishing criteria for determining when a pattern of violations exists.... The Committee intends that the criteria make clear that a pattern may be established by violations of different standards, as well as by violations of a particular standards. Moreover... pattern does not necessarily mean a prescribed number of violations of predetermined standards.... As experience with this provision increases, the Secretary may find it necessary to modify the criteria, and the Committee intends that the Secretary continually evaluate the criteria, for this purpose.

Yet, 33 years and more than a dozen mine disasters later, MSHA apparently has only issued one (1) "pattern of violations" under the Mine Act. The implementing regulation and MSHA's internal criteria for determining a "pattern" is currently framed so that it is nearly impossible for a repeat violator to be subjected to the enhanced enforcement intended in the statutory provision.¹⁸ I have attached to my testimony a letter recently sent by myself and long-time mine safety advocate Tony Oppgard to MSHA requesting that they rescind and rewrite the regulation so that it complies with the statutory requirements of section 104(e).

¹⁶ S. Rep. No. 95-181, 95th Cong. 1st Sess. 36 (1977).

¹⁷ S. Rep. No. 95-181, 95th Cong. 1st Sess. 36 (1977).

¹⁸ 30 C.F.R. part 104; <http://www.msha.gov/POV/POVsinglesource.asp>

Much has been recently made of the effect that the significant backlog of cases at the Federal Mine Safety and Health Review Commission (“Commission”) has had on MSHA’s ability to enforce the “pattern of violations” provision against repeat violators. The claim is that mine operators are appealing all violations upon which a pattern could be based and their pending status ties MSHA’s hands.¹⁹ Although the backlog is troubling and should be addressed, it is a red herring and not the root cause of the problem.²⁰ Never mind that the backlog has only existed for a couple of the 33 years the “pattern of violations” provision has been on the books. Simply, MSHA has not used the statutory tools available in the Mine Act to aggressively address problem mines. Not only has MSHA unnecessarily constrained its ability to use section 104(e), it has reportedly never sought an injunction or restraining order against a mine that it believes engaged in a pattern of violation that constitutes a continuing hazard to the safety of miners as

¹⁹ Although a recent report cited a “computer program error” and not the Commission’s backlog for the failure to send a warning letter that Upper Big Branch mine may be placed on a “pattern of violations.” <http://wvgazette.com/News/montcoal/201004130638>

²⁰ In fact, further undercutting the claim that endless appeals are preventing “pattern of violations” notices, is the 2006 agreement between the Solicitor and Massey Energy wherein the company could reopen delinquent penalties that had become final orders of the Commission:

We consider the Secretary's position in this case in light of the provisions of the “Informal Agreement between Dinsmore & Shohl Attorneys and Department of Labor - MSHA - Attorneys Regarding Matters Involving Massey Energy Company Subsidiaries” dated September 13, 2006. Therein, the Secretary agreed not to object to any motion to reopen a matter in which any Massey Energy subsidiary failed to timely return MSHA Form 1000-179 or inadvertently paid a penalty it intended to contest so long as the motion to reopen is filed within a reasonable time. Thus, we assume that the Secretary is not considering the substantive merits of a motion to reopen from any Massey Energy subsidiary so long as the motion is filed within a reasonable time. Such agreements obviously are not binding on the Commission, and the Secretary's position in conformance with the agreement in this case has no bearing on our determination on the merits of the operator's proffered excuse.

Secretary of Labor, MSHA v. Rockhouse Energy Mining Co., 31 FMSHRC 847 (Aug. 11, 2009).

allowed under section 108(a)(2).²¹ Thus, additional legislation may be needed to fully realize Congress' intention 33 years ago to prevent mine operators from engaging in a pattern of recurrent violations that can ultimately lead to the deaths of miners.

Once again, we as a nation are reeling from another mine disaster. However, Congress has an opportunity to enact changes that can ensure the protection of today's miners and prevent future generations of mining families from suffering like too many families have over the years. Thank you for taking my recommendations into consideration.

²¹ 30 U.S.C. § 818(a)(2).

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for Mine Safety & Health
Mine Safety & Health Administration
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RE: request to rescind “pattern of violations” regulation

Dear Mr. Main:

On behalf of the coal miners that we represent in safety-related litigation in the coalfields of eastern Kentucky, we hereby respectfully request MSHA to immediately rescind its “Pattern of Violations” regulation found at 30 CFR Part 104, and to re-write the regulation so that it complies with the statutory requirements set forth in §104(e)(1) of the Mine Act and as expressed in the Mine Act’s legislative history.

Section 104(e)(1) provides, in pertinent part, that, “**If an operator has a pattern of violations of mandatory health or safety standards** in the coal or other mine which are of such nature as could have significantly and substantially contributed to the cause and effect of ... mine health or safety hazards, **he shall be given written notice that such pattern exists**. If, upon any inspection within 90 days after the issuance of such notice, an authorized representative of the Secretary finds any violation of a mandatory health or safety standard which could significantly and substantially contribute to ... a safety or health hazard, the authorized representative shall issue an order requiring the operator to cause all persons in the area affected by such violation ... to be withdrawn from, and to be prohibited from entering, such area until an authorized representative determines that such violation has been abated” (emphasis added).

The Committee that drafted the “Pattern of Violations” provision stated that, “The need for such a provision was forcefully demonstrated during the investigation by the Subcommittee on Labor of the Scotia mine disaster which occurred in March 1976 in Eastern Kentucky. That investigation showed that the Scotia mine, as well as other mines, had an inspection history of recurrent violations, some of which were tragically related to the disasters, which the existing enforcement scheme was unable to address. **The Committee’s intention is to provide an effective enforcement tool to protect miners when the operator demonstrates his disregard**

for the health and safety of miners through an established pattern of violations ...

The Committee believes that this additional sequence and closure sanction is necessary to deal with continuing violations of the Act's standards. The Committee views the §105(d)(1) notice as indicating to both the mine operator and the Secretary that there exists at that mine a serious safety and health management problem, one which permits continued violations of safety and health standards. The existence of such a pattern should signal to both the operator and the Secretary that there is a need to restore the mine to effective safe and healthful conditions and that the mere abatement of violations as they are cited is insufficient...

The Committee intends that the criteria [to determine when a pattern of violations exists] make clear that a pattern may be established by violations of different standards, as well as by violations of a particular standard. Moreover, while the Committee considers that a pattern is more than an isolated violation, pattern does not necessarily mean a prescribed number of violations of predetermined standards nor does it presuppose any element of intent or state of mind of the operator..." Legislative History of the Federal Mine Safety & Health Act of 1977, at 32-33 (1978) (emphasis added)

Based on the foregoing plain language of the statute, as well as its legislative history, we believe the Mine Act mandates MSHA to notify an operator whenever a pattern of violation exists. The regulation promulgated by MSHA - which **WARNS** the operator that it might be placed on a pattern if it doesn't improve its safety performance - in our view, contradicts the plain language of the provision and, moreover, defeats its intent. By **WARNING** an outlaw operator, MSHA is effectively telling the operator how to avoid being placed on a pattern and thus how to avoid stricter scrutiny of its compliance with the law. We think it akin to an MSHA inspector observing a violation, but improperly warning the operator that a citation will be issued if the violation is not corrected in a prescribed period of time.

The fact that only one coal mine in the entire United States has been placed on a pattern under §104(e)(1) since the passage of the Mine Act in 1977 should make it obvious to MSHA that this provision of the law is not working. We believe that the Congress that enacted this important enforcement tool in 1977 would be stunned to know that it has only been used once in the past 33 years - despite the fact that miners continue to die at an unacceptable rate in our nation's mines.

Indeed, the extensive and flagrant violation history of the Upper Big Branch mine makes clear that that mine should have been "placed on a pattern" long before the recent disaster. Any mine that accumulates almost 50 unwarrantable failure violations in a single year deserves the heightened scrutiny provided by §104(e)(1) of the Mine Act. The fact that Massey's Upper Big Branch mine did not meet the criteria set forth in MSHA's "pattern of violations" regulation is proof that the regulation contradicts the intent of the statutory provision. Had MSHA used this enforcement tool as Congress intended, the mine would have received the stricter scrutiny that might have prevented the disaster.

Please call us if you have any questions about this request. Thank you for your consideration of this matter.

Sincerely,

Tony Oppegard

TONY OPPEGARD
Attorney-at-Law

Wes Addington

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