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Testimony before the  
Senate Committee on Appropriations  
Subcommittee on Labor, Health and Human Services,  
Education and Related Agencies

Investing in Mine Safety: Preventing Another Disaster  
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Washington, D.C.

Thank you for giving us this opportunity to testify before this Appropriations Subcommittee. As President of the United Mine Workers of America (“UMWA”), I represent the union that has been an unwavering advocate for miners’ health and safety for 120 years.

This Committee plays an important role in ensuring miners’ health and safety: adequate funding of the different government agencies that contribute to miners’ health and safety is essential to protecting our nation’s miners. We certainly appreciate your leadership in asking whether the various agencies with such responsibilities have sufficient funding, and whether additional resources are needed to protect miners.

We suggest there are three separate but related issues to consider about government support: manpower; materials and equipment; and research and development. For each of these, there are current needs that would benefit from additional support. We are pleased to have this chance to share our thoughts about what the government can do to better help protect our nation’s workers from unsafe and unhealthy work places.

Before I speak to the main topic, however, I wish to take a moment to remember the 29 miners killed last month at Massey’s Upper Big Branch mine, as well as the miner who remains hospitalized. Our hearts and prayers go out to all their families. Even though that mine was non-union, all miners mourn when one of our own is killed working in a mine; our entire community has been devastated by this horrific tragedy.

We believe that investigations of the Upper Big Branch tragedy will show that safe mining practices were *not* followed at that operation and miners were being exposed to senseless dangers. We already know that MSHA issued 515 citations and orders at the Upper Big Branch mine in 2009, and another 124 so far in 2010; moreover, the paper MSHA issued to Upper Big

Branch reflects serious health and safety violations: 39% of the 2009 citations were for “significant and substantial” (“S&S”) violations. These violations are usually quite serious - the kind of violations that can contribute to mine fires, explosions and the deaths of coal miners. Even more troubling is the fact that for the Upper Big Branch mine, in calendar year 2009 MSHA issued 48 withdrawal orders pursuant to Section 104(d)(2) of the Mine Act for S&S violations the operator knew or should have known constituted a hazard; as well as a Section 107(a) withdrawal order for an imminent danger. These numbers far exceed industry norms. We are disturbed that these conditions were allowed to develop and continue and believe that a consistent and aggressive enforcement scheme is necessary to protect the nation’s miners. For in the end it’s miners who pay the price when operators do not adhere to what the law requires. Unless operators operate mines consistent with legal requirements, we will continue to witness miners dying.

To address some of the present shortcomings we urge the government to provide support in the form of additional staffing in the key agencies, as well as for the purchasing of up-to-date equipment to better support miners’ health and safety.

### **Manpower:**

We believe there is a need for increased staffing at MSHA, within the Department of Labor Solicitor’s Office, at the Review Commission, and at NIOSH for the government to have a more effective mine health and safety program.

Over the last few months, there has been an important and much-needed focus on the huge backlog of cases at the Federal Mine Safety and Health Review Commission (“Commission”). We firmly believe that this backlog has served to undermine some of the changes Congress directed in the MINER Act of 2006. This pertains directly to the Appropriations process insofar as more Commission Judges are needed to reduce the backlog, which, in turn, is needed to restore the enhanced penalty structure Congress designed through the MINER Act. While we are pleased that \$22 million of additional funding was included in the supplemental budget bill that the Appropriations Committee recently passed to address these needs, the backlog will persist for many years unless the increased budget levels continue to support staff increases at the Commission, MSHA, and the DOL’s Solicitor’s Office.

The Commission backlog has arisen since passage of the MINER Act in 2006, and the related increase in Mine Act penalties: for 2006, MSHA assessed about \$35 million in penalties, while for 2009 assessed penalties rose to about \$141 million. With the increase in penalties, the number and rate of contested cases also jumped. For each of the five years immediately before the MINER Act (2000-2005), only 5-7% of coal mine civil penalties lead to cases being

contested before the Commission, whereas for the last three years (2007-2009), the rate increased to 18%, 30% and 31%, respectively.

Why is this important? Because without a meaningful structure for imposing and collecting the penalties, the Congressional goal of increasing fines for Mine Act violations has not been realized. In fact, the higher penalty structure is being subverted by a) the huge rate of contests that operators now file, overwhelming the government's ability to deal with its caseload, and b) MSHA's practice of reducing assessments when operators contest them.

When operators contest the citations and penalties, there is a delay to their finality. This delay prevents MSHA from imposing the enhanced penalties that apply for *repeat* violations, or from placing an operator with numerous violations on a "pattern of violations." Thus, while the higher penalty structure was designed to motivate operators to NOT have repeat violations, operators have been able to avoid them by delaying a final order that would show the repeat violation. Likewise, MSHA's powerful "*pattern of violations*" enforcement tool becomes frustrated when citations are caught up in the Commission's backlog. MSHA's determination that a mine has a "pattern of violations" carries much more serious consequences, and a mine must have an inspection free of significant and substantial (S&S) violations in order to get off of the "pattern."

In short, having a significant delay in the resolution of alleged violations diminishes MSHA's ability to use its full arsenal of its enforcement tools. Yet, many of the violations caught up in the contest process are quite serious - the kind of violations that contribute to mine fires, explosions and the deaths of coal miners.

Another problem follows when operators challenge MSHA citations and proposed penalty assessments, and they routinely see their penalties reduced. This occurs both at the MSHA "conference" as well as after a case is referred to litigation. Reductions often occur at conferences when the mine inspector who issued the citation does not attend the conference to explain the reason for the citations, leaving the conferencing officer with no first-hand knowledge of the conditions cited. The operators, on the other hand, regularly send their representatives to conferences to dispute the validity and gravity of the citations that were issued. As a result, conferencing officers frequently reduce or abate citations. We encourage MSHA to provide a better means for the inspectors to be able to support their citations, preferably with the inspector participating, too. We think it would also be helpful if an attorney from the Solicitor's Office would be assigned to work with conferencing officers to help them identify the litigation strengths and weaknesses before any adjustments would be made. This would require additional staffing at both MSHA and within the Solicitor's Office.

While the Commission has had certain time-lines for processing its cases, those no longer bear any relationship to reality. However, getting timely resolution of these disputes is critical to miners' health and safety. One possible help would be for the Commission to adopt procedures like the OSHA Review Commission's "Simplified Proceedings;" in our testimony before the House Committee on Education and Labor in February of this year, the Union supported having the Commission determine whether using such procedures would be appropriate for mine safety cases. We are unaware of any progress the Commission may have made in this regard since that February hearing.

MSHA has indicated a more aggressive rulemaking agenda, which we support. However, such rulemaking efforts will likely require additional staffing, too.

To be most effective, we also believe MSHA needs to expand its cadre of in-house specialists. MSHA employs experts in such critical issues as ventilation, electrical systems, roof control, and ground control. The specialists review mine plans operators submit for MSHA approval before operators can implement their mining plans. These experts are also needed to defend MSHA citations when operators challenge them, as well as to investigate accidents. It is essential that MSHA fully staff and train its specialists to ensure the Agency keeps pace with industry advancements. In addition, with recent and anticipated retirements of MSHA's specialists, the Agency must attract and train additional specialists to maintain its in-house expertise. It takes time for MSHA specialists to be able to perform the full range of required tasks, so this is an area that requires on-going support.

We further recommend that MSHA affirmatively and repeatedly educate workers and management alike about the miners' right to work safely: the Mine Act includes strong worker protections, but we know all too well that miners, especially non-union miners, do not exercise these rights. Some simply do not know or understand them, but many more are too intimidated to speak up. As information widely disclosed since the Upper Big Branch disaster has demonstrated, miners become accustomed to accepting the status quo: work or go home, just don't rock the boat. In the coalfields, good paying jobs are treasured and workers are hesitant to voice safety complaints for fear of getting discovered. Under the current law, the operator performs mine safety training and annual re-training, but for miners' rights training that we recommend be added, it is imperative that MSHA do the training. In particular, we suggest that MSHA educate miners – hourly and management – and no less often than yearly: about the miners' rights to work safely; to withdraw when conditions are dangerous; and to phone the government (even anonymously) about conditions, as well as about the criminal penalties that can attach if an operator interferes with the miners' exercise of these safety rights.

I am attaching a letter I submitted to the Senate HELP Committee earlier this month, in which I explain some of the many areas requiring additional Agency attention to improve miners' health and safety. Some of the proposed changes will require legislative action while others can be accomplished through rulemaking or internal policy. Regardless of the procedure by which the various changes can be made, many will require additional MSHA personnel to effect the needed improvements.

## **NIOSH**

In connection with our recommendations, below, for additional support for research and development, we believe it will be necessary to fund additional personnel for the National Institute for Occupational Safety and Health ("NIOSH") to continue the valuable work it offers to the mining industry. Because of the very small customer base for the mining industry, NIOSH performs critical research and development for the technological advancements that improve miners' health and safety.

While we are not presently aware of the particular personnel needs of NIOSH, we feel it is essential to miners' health and safety that NIOSH be well-funded.

## **EQUIPMENT:**

It is essential that MSHA have equipment to enforce the laws and regulations governing miners' health and safety, as well as the best equipment available to respond to mine emergencies. It currently falls short on both fronts.

Lake Lynn, is an MSHA facility near Pittsburgh that is used for testing mining equipment. However, it has been shut down for some time due to structural damage of the roof that occurred while blast-testing seals to meet the criteria of the MINER Act. This facility is a great resource to miners for testing new technologies; it is also a great training facility for mine rescue team members. Without the Lake Lynn facility, the mining industry tests products at various mine sites. However, that is not satisfactory and we nearly lost a Jim Walters operation in Alabama to a mine fire while doing a test for a mine sealant. It could have resulted in loss of lives and a mine shutdown. Therefore, we urge an allocation of funds to reopen the Lake Lynn facility.

The UMWA training center in Pennsylvania is another valuable facility for miners that is deserving of the government's financial support. This center offers invaluable training for new miners, underground electrical training, and mine rescue teams.

Another valuable tool for enhanced training lies with the virtual reality training system. We urge an allocation of funding for the purchase of this state of the art technology that allows

miners to experience and respond to real hazards in a safe and controlled setting. For example, it can show miners how best to escape a mine disaster, as well as how to respond to underground rib and roof stability problems. This technology would be especially helpful for mine rescue teams, but all miners would benefit from its use.

MSHA would benefit from additional funding for improved communications and training within the Agency. For inspector training, technical support, and improved emergency response, MSHA must be able to communicate with its own staff quickly and efficiently. We understand additional funding is needed to bring the Agency's equipment up to today's standards.

We also support the creation and funding of another mine emergency operations center, to be located in the Midwest. At the present, such centers are located in the East (near Pittsburgh, PA and Beckley, WV) and the West (Provo UT). However, if there were a mining disaster in the Midwest, where mining activities have been increasing, MSHA does not have equipment in reasonable proximity to respond quickly.

Other equipment that would help MSHA better enforce existing laws and regulations as well as to best respond to mine emergencies include:

- **Coal Dust Explosibility Meters:** This is a portable device that quickly measures coal and rock dust mixtures to determine whether they are in the explosive range. As it now stands, samples an inspector collects are sent away and take about two weeks to process. For example, it was only after the Upper Big Branch mine explosion that we learned the mine had had an impermissible coal and rock dust mixture shortly before the explosion. Having immediate information about the combustible content in a mine could prevent future explosions.
- **Mine Rescue Robots:** MSHA has at least one such robot, but more would be helpful for emergency responsiveness. These robots operate remotely and can go where it may be unsafe for rescuers to travel. The robot can provide real time data as well as video to help plan a rescue effort. We understand that the cost for each one is approximately \$265,000.

### **Research and Development:**

Under both the Mine Act of 1977 and the MINER Act of 2006, Congress anticipated that NIOSH would provide critical research and development of technology and materials for the mining industry. It must be fully funded to continually improve and enhance miners' health and safety.

Along with MSHA, industry, and union representatives, NIOSH developed proximity detection technology that is expected to dramatically improve safety around the huge mining equipment that is used both underground and on the surface. Before the Upper Big Branch disaster, MSHA determined that about 20% of the fatal accidents in the last five years could have been prevented through use of proximity detection equipment.

NIOSH also developed a collapsible drill steel enclosure that reduces roof bolting noise levels and also captures float coal dust to reduce its adverse health hazards, as well as a mobile manipulator that can lift and maneuver loads of up to 600 pounds.

We need NIOSH to help develop the next generation of self-contained self-rescuers, the units miners carry for whenever a mine emergency disturbs the underground atmosphere turning the air toxic. Today, miners are unable to speak with each other while wearing a SCSR, yet they cannot live if they take even a breath or two of the post-disaster poisonous air. There is also a pressing need for research directed at the development of tamper-proof machine-mounted methane monitors (also called “sniffers”) that will automatically cut the power to a machine if the sniffer is blocked, bridged or in any other way preventing proper methane readings; these are needed to warn miners of excessive concentrations of methane.

In short, NIOSH’s research and development efforts are essential to advancing miners’ health and safety.

### **Conclusion:**

We rely on the government to enforce the mine health and safety laws and regulations to protect miners’ health and safety. The government needs to have adequate resources to do so efficiently and effectively. It also must have up-to-date equipment that is physically proximate to be accessible in the event of mine emergencies. Additional resources are needed to accomplish these goals, and we appreciate your help realizing them. Thank you for allowing us to address this Committee, and for your continued commitment to workers’ health and safety.