

**STATEMENT OF  
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**BEFORE THE**

**SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
COMMITTEE ON EDUCATION AND THE WORKFORCE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman Walberg, Ranking Member Woolsey, and Members of the Subcommittee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) to update you on mine safety and health, and report on the actions we have taken since the April 5, 2010 explosion at the Upper Big Branch (UBB) mine in West Virginia that needlessly took the lives of 29 miners. That accident was the worst mining disaster since the creation of MSHA by the Mine Act and the deadliest coal mine disaster this nation has experienced in forty years. The need to rethink how we approach mine safety and health to protect miners took on a new urgency for all of us following that disaster. I also want to discuss why,

despite MSHA's extraordinary efforts in the wake of the UBB disaster, legislation is still needed to fully protect our nation's miners. The safety and health of those who work in the mines in this country is of great concern to President Obama, Secretary of Labor, Hilda Solis, and me. The Secretary has articulated a forward-looking vision of assuring "good jobs" for every worker in the United States, which includes safe and healthy workplaces, particularly in high-risk industries, and a voice in the workplace. At MSHA, we are guided by that vision.

I arrived at MSHA over a year ago with a clear purpose - to implement and enforce the nation's mine safety laws and improve health and safety conditions in the nation's mines so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift. Having been involved in mining since the age of 18, I have a deep respect for those who choose mining as a career. I have spent most of my life with miners, mine operators and mine safety professionals. I think we can all agree that mining is critically important to our economy, and I believe most understand our collective responsibility to ensure that effective health and safety standards are in place and are followed to prevent injury, illnesses and death.

I know that it is possible for a mine to be a safe place to work for miners and a profitable business for operators. Most of the industry shares this belief and make the commitment to safety because it is not only the right thing to do, but the smart thing to

do as well. Injuries, illnesses, and fatalities have for too long taken a toll on the mining industry and its workers.

In addition, at MSHA, we are concerned with the economic and technological feasibility of our regulations and the Mine Act requires us to take that into consideration when developing regulations. We also understand that MSHA's effective enforcement of the law should create a level playing field, so that operators who play by the rules and provide safe mine conditions do not have to compete against operators that cut corners on safety.

MSHA will continue to partner with the industry to ensure that miners are safe and healthy and that the industry and those who derive their livelihood from the industry – especially those that play by the rules – continue to thrive.

### **Upper Big Branch Investigation**

Since I last testified before this Committee in July 2010, we have made significant progress in MSHA's investigation into the Upper Big Branch explosion. As many of you are new to the Committee, I would like first to provide a brief overview of the investigation and then provide an update on what we have learned so far.

The investigation team was named just after the explosion, but there was a delay in getting the team members underground due to unstable conditions and the need to provide a safe working

environment for the investigators. The investigative team began its physical inspection at the end of June 2010. The underground investigation – which has been extensive – is nearing completion. At the time of my July 2010 testimony before the Committee, we had conducted approximately 100 interviews. Now, we have held over 260 witness interviews. MSHA has dedicated 108 enforcement personnel to the investigation, which includes 10 mine dust survey teams, 7 mapping teams, 3 electrical teams, 1 ventilation team, 1 geology team, 1 flames and forces team, 1 evidence collection team, and 1 inspection activities team. In addition, 45 technical support personnel are performing testing and other technical activities related to the investigation. In July, we had just begun our physical investigation, but now our investigative teams have combed through every inch of the accessible parts of the mine. To date, over 2,000 pieces of evidence have been collected and tested, including equipment, and gas, dust and other samples. While there still is more work to be done, MSHA is committed to completing the investigation in as timely a manner as possible.

I want to note for the Subcommittee that while MSHA is investigating the accident with the purpose of understanding what caused the accident and working to prevent future, similar accidents, the Department of Justice (DOJ) also opened its own investigation into possible criminal wrongdoing almost immediately after the explosion. The United States Attorney for the Southern District of West Virginia requested that MSHA delay its announced public hearings and the release of witness

transcripts so as not to jeopardize the separate criminal inquiry by DOJ. MSHA is honoring that request in recognition of the President's instruction for the Department of Labor to work with DOJ to ensure that every tool in the federal government is available in the investigation of the accident.

Since the outset we have conducted the investigation in as transparent a manner as possible. MSHA has established an "Upper Big Branch Single Source Page" on our website at: <http://www.msha.gov/PerformanceCoal/PerformanceCoal.asp> to keep the public informed about the accident. We post as much information as we can on that site.

In addition, we have honored our commitment to the families to keep them as informed as we can about the findings of the accident investigation team to date. To the extent that we have been able to release information, my colleagues and I have met with the families of the victims on a number of occasions to bring them up to date on the status of the investigation. The last family briefing was on January 18, 2011, when we met with the families for almost four hours. The Solicitor of Labor, M. Patricia Smith, joined us at this briefing. In addition, consistent with Section 7 of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), MSHA family liaisons are in continuous contact with the families.

Finally, we have held regular briefings for the Committee leadership and your staff on the status of the investigation and our preliminary findings.

When I testified in July, there was little I could tell you about what caused the explosion at Upper Big Branch. In the intervening months, we have learned a tremendous amount. Based on the evidence that the team has gathered to date, it appears that a low volume of methane and/or methane fuel from natural gas provided the fuel for the initial ignition on or near the face of the tailgate side of the longwall shearer, or cutting machine. Small methane ignitions are not uncommon in coal mines, but when proper safety measures are followed, these ignitions are generally controlled or extinguished by proper ventilation and safety equipment on the longwall shearer, such as mining bits and water sprayers.

The evidence to date shows, however, that at Upper Big Branch, the small ignition was not contained or quickly extinguished. The analysis also indicates that a small methane ignition transitioned into a massive explosion, fueled by an accumulation of coal dust that propagated the blast.

While the investigation is not complete, and it is likely to be several months before MSHA is able to issue a report, we do know already that explosions in mines are preventable. Most importantly, we know that a workplace culture, which puts health and safety first, will save lives and prevent tragedy.

## **MSHA's Actions after Upper Big Branch**

The tragic events of April 5<sup>th</sup> at the Upper Big Branch mine changed the lives of many people – the miners' families, their communities, miners around the country, and those of us at the Department of Labor dedicated to mine safety. When the Secretary and I sat with the families on those fateful days following the explosion, waiting for news of their loved ones, we committed to them that MSHA would act boldly to prevent another similar disaster. President Obama reiterated that promise when shortly after the accident he told the nation that “we owe [those who perished in the UBB disaster] more than prayers. We owe them action. We owe them accountability.”

The MSHA team has pulled together and worked hard to make good on the President's promise. We are using every tool at our disposal, including ramped-up enforcement, targeted upgrades in our regulations, and education and outreach.

One of our most effective enforcement tools has been our impact inspections. After the disaster at the Upper Big Branch mine, MSHA began to conduct strategic “impact” inspections at coal and metal and nonmetal mines that needed greater attention. From April 2010 through January 2011, MSHA has conducted 220 “impact” inspections at mines with special concerns. These inspections are ongoing. Targeted mines are those that could be at risk of explosion, mines with poor compliance histories or histories of accidents or fatalities, or mines with other warning

signs, such as efforts to cover up violations, hotline complaints or mines with poor examination procedures. MSHA has also conducted inspections at mines with recurring problems dealing with adverse physical conditions or that have a poor safety culture. From testimony at the field hearing conducted by the Education and Workforce Committee in May 2010, we heard the different ways in which operators would use their knowledge of our inspection methods to hide the violations they were committing. Therefore, MSHA has conducted these impact inspections in a way that has shaken up even the most recalcitrant operators. MSHA has shown up at their mines during “off hours,” such as evenings and weekends. In some cases, MSHA has taken hold of the mines’ phone lines upon arrival to prevent unscrupulous operators from giving advance notice of the inspectors’ presence at the mine. Our inspectors have gone into those mines in force, with sufficient personnel to cover the key parts of the mine quickly before hazards could be hidden or covered up.

The results of the impact inspections have been significant. MSHA inspectors have issued more than 4,100 citations and 380 orders for violations of mine safety and health laws, rules and regulations during these targeted inspections – and miners are safer because we conducted those inspections. Some of the conditions and violations MSHA found during “impact” inspections are quite disturbing. For example, in July 2010, MSHA inspectors commandeered company phones during the evening shift at a mine in Claiborne County, Tennessee, to prevent surface personnel from notifying workers underground

of MSHA's presence on the property. Inspectors found numerous ventilation, roof support, and accumulation of combustible materials violations. These types of conditions potentially expose miners to mine explosions and black lung disease. The operator was also mining into an area without necessary roof support, placing miners at further risk from roof falls. In all, MSHA issued 27 citations and 11 orders as a result of that inspection.

Unfortunately, the mine operator did not get the message. MSHA has now conducted four "impact" inspections at the mine, based on its ongoing compliance problems and apparent disregard for the law, and in November 2010, the mine was issued a potential pattern of violations notice. During the December 2010 "impact" inspection -- after the potential pattern of violations letter went out -- inspectors issued four very serious orders for accumulations of combustible coal dust of up to 24 inches in depth covering extensive areas where miners work and travel, and for not properly maintaining a lifeline in the mine's secondary escapeway. Coal and rock dust on the lifeline and reflective markers would have made it more difficult for miners to effectively escape to the surface in the case of an emergency. During the next regular safety and health inspection at the mine on January 19, 2011, MSHA found more violations for accumulations of combustible materials, not maintaining proper clearance on a beltline, and inadequately supported ribs - these violations required equipment to be shut down and effectively closed the mine to production.

During another “impact” inspection in September 2010 at a mine in Boone County, West Virginia, MSHA inspectors arrived in the middle of the evening shift and prevented calls to warn those working underground. Inspectors found that the mine was making illegal deep cuts into the coal seam. In addition, many areas of the working section were without adequate ventilation while these excessive cuts were being taken, exposing miners to the risk of explosion and black lung. The inspection revealed that air readings were not being taken during the work shift and that mine ventilation was being short-circuited. In one particular area, suspended coal dust was so thick it was difficult to see the massive continuous mining machine in operation nearby. Again, these are conditions that can also result in explosions and cause black lung. The inspector issued 11 closure orders during that inspection.

Another important post-UBB enforcement action was MSHA’s decision -- for the first time since the passage of the Mine Act -- to seek a federal court injunction under the Mine Act’s “pattern of violation” injunction section. We filed the injunction action against Massey Energy’s Freedom Energy Mining Company’s Number 1 mine located in Pike County, Kentucky. The mine had a pattern of violations of mandatory safety and health standards, which in our view, constituted a continuing hazard to the health and safety of the miners working at the mine. From July 2008 to June 2010, MSHA had issued 1,952 citations and 81 orders to the company for violating critical standards including improper ventilation, failure to support the mine roof, failure to clean up

combustible materials, failure to maintain electrical equipment, and failure to conduct the necessary examination of work areas.

Shortly after we filed the action, the operator announced it was permanently closing its mine and moving the miners to other mines it owned in the area. It did agree to a court order that ensured the safety of miners during the shutdown process and protected the livelihood of the displaced miners.

MSHA has also evaluated other mines for possible injunctive relief, and we will continue to use this remedy when mines are engaged in a pattern of violations and miners are faced with continuing hazards to their safety and health. Yet despite a successful result, the case against Freedom Energy demonstrates that injunctive court actions will not always proceed quickly or result in instant relief.

MSHA has also issued new enforcement policies and alert bulletins addressing specific hazards or problems to ensure that miners and mine operators understand important enforcement policies. We have addressed topics such as the prohibition on advance notice of MSHA inspections, mine ventilation requirements that protect against mine explosions, and the right of miners to report hazards without being subject to retaliation.

I have said that the pattern of violations, or POV process, is broken and MSHA is committed to fixing it. In the provision's 33-year-old history, no mine has ever been subject to the full measure of the law contemplated by Congress. While we were

reviewing the POV process prior to the UBB disaster, the incident heightened the urgency of moving forward with reforms.

Therefore, in October 2010, we put new screening criteria in place for the pattern of violations or POV program. This was a critical first step in reforming the current POV program to give the Agency an effective enforcement tool to address mines that repeatedly violate safety and health standards. Notifications of potential pattern of violations have been sent to 14 mines using these new screening criteria and procedures, with additional mines still under review for potential pattern of violation actions.

The next step in fixing the broken POV program was the proposed revisions to the regulations. As promised, on February 2, 2011, we published a proposed rule on POV, which would address flaws in the current rule and reflect the intent of Congress when it wrote the POV provisions, such as not limiting MSHA to looking at enforcement actions that have resulted in final orders and eliminating the potential POV process.

MSHA also accelerated action on several other regulatory actions after UBB. In September 2010, MSHA developed and issued an Emergency Temporary Standard for increasing the incombustible content of combined coal dust, rock dust, and other dust in coal mines to minimize the potential for coal dust explosions. This ETS is based on research findings and recommendations by the National Institute for Occupational Safety and Health (NIOSH), within the Department of Health and Human Services. As

discussed above, we strongly believe that coal dust played a role in the UBB disaster.

The UBB disaster highlighted the need to ensure that mine operators take seriously their obligation to find and fix the hazards in their mines, even when MSHA is not looking over their shoulders. In December 2010, therefore, MSHA published a proposed rule that would revise its requirements for pre-shift, on-shift, supplemental and weekly examinations of underground coal mines. The proposed rule would require that operators identify and correct violations of mandatory health or safety standards and review with mine examiners on a quarterly basis all citations and orders issued in areas where examinations are required. If implemented, this rule would reinstate requirements in place for about 20 years following the passage of the 1969 Mine Act.

The UBB disaster also enhanced the urgency of our need to address the backlog of cases at the Federal Mine Safety and Health Review Commission (FMSHRC). We have taken a number of actions to attack this problem. First, we are being good stewards of the supplemental appropriations that Congress provided for the Department and FMSHRC to reduce the backlog. The extra resources are helping us to resolve cases, and we continue to explore ways in which we can reduce the number of contested cases.

Last fall, I also launched a pre-contest conferencing pilot program in 3 MSHA districts. The pilot program allows the mining industry to meet on the local level with MSHA to resolve differences over citations and orders before they become matters of litigation and add to the backlog of contested cases. We are currently assessing the pilot program to determine how we can improve consistency and implement the conferencing program throughout MSHA to provide opportunities to resolve disputes before litigation is necessary. Just last month, MSHA held a stakeholder meeting with representatives from the coal and metal and non-metal industries and labor to discuss the pilot project and share ideas for an effective pre-contest process. Although it is too early to see the impact, I believe an effective pre-contest conference program could be an important tool in resolving cases.

Finally, the UBB disaster reinforced my concerns about MSHA's mine emergency response capabilities. I had already ordered a review to identify gaps in the system before UBB. Sadly, I saw many of those gaps first hand at the UBB site, such as inadequate communications and emergency equipment coordination.

MSHA has made major progress in this area. MSHA's new state-of-the-art mobile command center based in Pittsburgh is in service and nearing full operational capability. The center will improve MSHA's capacity to provide better communications, advice and guidance during a mine rescue and recovery. At the UBB site, I had difficulty communicating with the Department's headquarters and even with MSHA emergency response staff

who were in the vicinity of the mine. Our new center should help correct these difficulties. In addition, MSHA is updating its technology, developing standard operating procedures and implementing more comprehensive command and control training for the MSHA district personnel that would be responding to mine emergencies.

As a result of these improvements, we are better able to respond to and manage mine emergencies, but as MSHA continues its thorough review of emergency plans and procedures to identify and fix gaps in the system, we know that more needs to be done. For example, some mine operators do not have available mine emergency equipment and are not prepared to quickly respond to emergencies. We are working with the mining industry, state agencies, drilling companies and others to identify areas for improvement in overall mine emergency response and equipment needs.

Something that should not go unnoticed is that the 2006 MINER Act greatly enhanced our mine rescue response to the Upper Big Branch tragedy. The MINER Act improved the number, availability of and quality of training of mine rescue teams. I can tell you that I and the other mine emergency personnel coordinating the rescue efforts at Upper Big Branch greatly appreciated this improvement in mine rescue team strength and preparedness.

## **Education, Outreach and Compliance Assistance**

As I said at the outset, I believe that most mine operators want to run safe mines. In order to reach and assist these mine operators, MSHA has ramped up its education, compliance assistance, and outreach.

First, we have made it a priority to educate mine operators, contractors, miners, trainers and others about how to prevent injuries and fatalities in mines. Let's remember that it was not just the Upper Big Branch disaster that led to mining deaths in 2010. In total, 71 miners died on the job last year, compared to 34 in 2009. And most of these non-UBB related deaths are the types that are recurring in the mining industry. I have spoken to members of the mining industry and those who train miners about the causes of these accidents and the practices that can prevent them. We know how to prevent these deaths, but more must be done to put that knowledge to work.

One way to put that knowledge to work is to ensure that the industry is more proactive about safety. Operators should have effective safety and health management systems in place, since these are the best vehicles for establishing a culture of safety in mining workplaces. These systems should be developed with everyone in the company - from the CEO to those working in the mine. In October 2010, MSHA held three public meetings, which highlighted the importance of safety and health management systems in our nation's mines.

We also have had several successful, targeted education campaigns last year. In early 2010, we launched a new program called “Rules to Live By.” This is a fatality prevention initiative focusing on 13 frequently-cited standards in metal and nonmetal mining and 11 frequently-cited standards in coal mining that most commonly caused or contributed to fatal accidents over a 10-year period. This effort combines education and outreach on the front end, followed by enhanced enforcement by MSHA. In November 2010, we initiated a second phase of “Rules to Live By” focusing on 9 coal safety standards aimed at preventing other catastrophic accidents. We have posted information on the “Rules to Live By” initiative and the training module used to instruct inspectors on how to handle enforcement of the targeted standards on the MSHA website to allow the mining industry to have access to the training. This will also improve our consistency in enforcing standards.

In December 2010, we published a safety alert called “Watch Out!” to draw attention to the potential dangers to miners posed by shuttle cars, scoops, continuous mining machines and other equipment in underground coal mines. Seventy underground coal miners have died from being crushed or struck by this equipment since 1984 – 6 of them in 2010 alone. Without question, it is time to act to prevent these needless deaths. A solution to prevent these deaths is the use of proximity detection technology, which can warn miners when they are too close to the mining equipment. The technology can also shut down the machine before there is any harm to miners. Proximity detection systems are already used in South Africa, and MSHA has

approved 3 systems for use in U.S. mines. MSHA plans to issue an Emergency Temporary Standard requiring these detection systems on certain kinds of mining machines.

For metal and nonmetal mines, many of the citations MSHA issues are for violations of equipment guarding. As a result, in 2010, MSHA published “Guarding Conveyor Belts at Metal and Nonmetal Mines,” a photo-illustrated PowerPoint guide that provides detailed compliance information. The guide helps the metal and nonmetal mining industry meet the requirements of MSHA’s guarding standards on conveyor belts, and enhances awareness of guarding compliance and miner protection for both industry stakeholders and MSHA’s metal and nonmetal enforcement personnel. It supplements existing guarding guidance contained in “MSHA’s Guide to Guarding Equipment,” and MSHA’s existing program policy manual. The new guide was piloted through several state aggregate groups and distributed with the support of the National Stone, Sand and Gravel Association (NSSGA).

Also in 2010, we initiated a resource page on our website for the metal and nonmetal industry that includes a “Compliance and Updates” section. And just this year, MSHA released “Safety Pro in a Box,” a resource intended to provide meaningful compliance assistance to small and new operators in the aggregates industry. This safety tool box, which provides helpful compliance guides, was suggested by the NSSGA and developed with the association’s assistance.

In addition, mine operators and contractors need to train miners and mine supervisors on the conditions that lead to deaths and injuries, as well as on measures to prevent them. This is an industry in transition as new miners are replacing the aging workforce. MSHA is working with the mining industry to help ensure that education, training and knowledge transfer keeps pace with that transition and does not undercut health and safety gains made over the years.

Moreover, to promote better understanding of the mining industry's concerns with MSHA's enforcement program and to improve mine safety and health, MSHA has entered into alliances with a number of mining associations, including the NSSGA, the Industrial Minerals Association-North America and the Portland Cement Association. MSHA's Administrator for Metal and Nonmetal and I have met frequently with these groups and with many state aggregate associations across the country about their concerns. In addition, a joint technical committee was formed between MSHA and the NSSGA to develop compliance assistance materials. MSHA followed up on this committee's work by issuing Procedural Instruction Letters (PIL) and Program Information Bulletins (PIB) to advise MSHA inspectors and the mining industry on compliance.

MSHA is also teaming up with the Interstate Mining Compact Commission, an organization which represents state mining agencies, to coordinate a federal and state effort that promotes a culture of safety and encourages mine operators to live up to their responsibilities to provide safe and healthful workplaces, to fully

comply with state and federal requirements and to provide effective training for their miners.

MSHA also meets on a periodic basis with mine operators to discuss their specific concerns. On February 16, 2011, MSHA held stakeholder meetings with representatives of the coal and metal and non-metal industries, and labor. One concern we've heard from the industry is about the consistency in the citations issued by MSHA's inspectors. Consequently, we've taken several steps to address it, including a review of enforcement actions to ensure that MSHA policies and procedures are followed; a review of agency inspection procedures; field inspection audits to improve inspections; training of CLR representatives; and mandatory, comprehensive, refresher training for all inspectors. In 2010, we developed a new two-week training program for all MSHA field office supervisors to improve the quality and consistency of enforcement. As previously noted, we are working on establishing an effective pre-contest citation and order conference procedure that will provide earlier opportunities to resolve disputes. We also hope that the conferences will serve as learning experiences for both operators and MSHA personnel so that discrepancies in citations can be corrected going forward.

### **Eradicating Black Lung**

On the health front, MSHA continues to move forward on its "End Black Lung ---Act Now!" initiative, which is a comprehensive strategy to fulfill the promise made 40 years ago

with the passage of the 1969 Federal Coal Mine Health and Safety Act to eradicate Black Lung. According to NIOSH, in the past decade over 10,000 miners have died from Black Lung disease. Black Lung still kills hundreds of former coal miners each year and severely impairs the lives of many more; there are alarming indications that it is on the rise, even in younger miners.

In December 2009, we launched Phase I of the initiative, which includes education, outreach and enforcement. In October 2010, we launched Phase II by publishing a proposed rule, which would address shortcomings in the sampling process; lower the existing exposure limits for respirable dust; take advantage of new technology for measuring exposure – the continuous personal dust monitor; and expand medical surveillance, so that miners can take proactive steps to reduce hazardous exposures and better manage their health. On February 15, MSHA concluded a series of public hearings held across the country on this proposed rule, and we are encouraging all interested parties to submit comments by May 2, 2011.

## **Need for Legislation**

This Committee has a long history of standing up for our nation's miners. It has never subscribed to the myth that mining fatalities are an inevitable aspect of the business. I am joining the plea that Secretary Solis made to you when she testified before the full Committee last month -- for you to again stand up for miners and pass new mine safety legislation.

Almost one year has passed since we lost those 29 miners at Upper Big Branch. We have learned much in that time. As I noted at the outset, we have come a long way in our understanding of what happened that day, and that understanding has allowed us for the first time in recent weeks to share with you some of the preliminary analyses of our investigative team.

We also have learned how to better use all of MSHA's available tools and strategies to fully enforce the Mine Act - including targeted enforcement, regulatory reforms and compliance assistance. The strategies the Agency has used for its impact inspections have been largely successful. In addition, its regulatory actions, if implemented, will make operators more responsible for finding and fixing violations and will highlight those mines with continuing problems. Our extraordinary compliance assistance and outreach efforts also will ensure that operators who want to do the right thing have the tools they need to avoid violations and hazards.

To make MSHA truly effective in cracking down on serial violators who seem indifferent to miners' health and safety, MSHA needs additional tools that only Congress can provide. We need to change the culture of safety in some parts of the mining industry, so that they are as concerned about the safety of their miners when MSHA is not looking over their shoulders as when MSHA is there - because MSHA cannot be there all the

time. The Administration supports legislation that gives MSHA the enforcement tools it needs to ensure that all mine operators live up to their legal and moral responsibility to provide a safe and healthful workplace for all miners.

I am not asking the Committee to take up any particular bill. I understand that this is a new Congress with new leadership. I am asking that we work together across the aisle and across the branches to address at least the following areas:

Pattern of Violations: There is a reason that no Administration – Democratic or Republican – has figured out how to effectively apply the current statutory POV program. It is broken and can be improved only so much through regulation. For example, the provisions of the current POV statute could potentially put some mines in POV status indefinitely while being insufficient to ensure long-term change in other circumstances. While we believe we are making significant improvements to the POV program within the confines of the current statute, changes to the law that provide MSHA the tools to engage in a long-term, more remedial approach with chronic violators would be a significant improvement to current law.

Injunctive Relief: The current law does not have a “quick fix” to the safety of mines like the Freedom Energy Mine where MSHA for the first time ever sought an injunction for a pattern of violation under section 108 of the Mine Act to change a culture of non compliance that threatened the safety and health of the miners. While MSHA was successful in compelling the mine to implement additional safety and health protections as a result of

using section 108(a)(2), the current statute could be simplified to help MSHA make its case. The lesson learned is this: the litigation process using the existing tool may be slower than needed to protect miners, and new legislation should consider language that clearly provides the Secretary of Labor with sufficient authority to act when she believes protecting miner safety and health requires immediate action.

Criminal Penalties: Legislation should strengthen the criminal provisions of the Mine Act. No mine operators should be risking the lives of their workers by cutting corners on health and safety, but for those who would engage in such a practice, we need to put a new weight on the side of protecting the lives of miners. We hope and intend that criminal prosecutions under an enhanced Mine Act would continue to be rare. Now they are rare, however, because the bar for prosecution is too high. We hope that with new legislation they will be rare because a more serious law will provide a successful deterrent.

These enhanced criminal penalties should also extend to those who provide advance notice of MSHA inspections. In the aftermath of UBB, there were troubling reports of some operators providing advance notice of an MSHA inspection in order to hide violations and conduct that put miners at serious risk. This is an intolerable evasion of the law that is all too common. Increasing existing criminal penalties for these tactics would send a clear message that this behavior will not be tolerated.

Whistleblower Protection: New legislation must ensure miners are fully protected from retaliation for exercising their rights.

Because MSHA cannot be in every mine, finding every hazard every day of the week, a safe mine requires the active involvement of miners who are informed about health and safety issues and can bring dangerous conditions to the attention of their employer or MSHA before these conditions cause an injury, illness or death. Yet, as we heard from miners and family members testifying at the Committee's field hearing in Beckley, miners were afraid to speak up about conditions at Upper Big Branch. They knew that if they did, that could lose their jobs, sacrifice pay, or suffer other negative consequences.

The Mine Act has long sought to protect from retaliation those miners who come forward to report safety hazards. But it is clear that those protections are not sufficient, and many miners lack faith and belief in the current system. Legislation that creates a fairer and faster process is urgently needed.

## **Conclusion**

Thank you for allowing me to testify before the Subcommittee. At the end of the day, it comes down to this: MSHA cannot be at every mining operation every shift of every day. There could never be enough resources to do that, but even if there were, the law places the responsibility of maintaining a safe and healthful workplace squarely on the operator's shoulders. Improved mine safety and health is a result of operators fully exercising their responsibilities. Taking more ownership means finding and fixing problems and violations of the laws and rules before

MSHA finds them - or more importantly – before a miner becomes ill, is injured or is killed. Mines all across this country operate every day while adhering to sound health and safety programs. There is no reason that every mine cannot do the same.

I look forward to working with the Committee to find the best way to accomplish our shared goal of providing our nation's miners the safety and health protections they deserve.