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April 4, 2014

The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
U.S. House of Representatives  
2181 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Kline:

We write today requesting that you convene the members of our Committee to mark up and move to the House floor long-overdue legislation, the Robert C. Byrd Mine Safety Protection Act (H.R. 1373), a bill that will save miners' lives and close glaring loopholes in our nation's mine safety laws that enable mine operators to place profits ahead of safety.

April 5<sup>th</sup> marks the 4<sup>th</sup> anniversary of the Upper Big Branch mine disaster where 29 miners were killed in the deadliest U.S. coal mine disaster in the past 40 years. In the past, you have urged that Congress hold off on consideration of mine safety legislation until the Mine Safety and Health Administration (MSHA) and others completed their investigations of the UBB tragedy.

Those investigations have been completed for at least two years. It is past time for action.

All totaled, six reports have been issued, including four accident investigation reports and two separate reviews—one internal and the second external—of the agency's performance vis-à-vis the Upper Big Branch (UBB) tragedy.<sup>1</sup> These reports provided safety agencies, the mining industry and Congress with a roadmap to help prevent future tragedies.

We appreciate your convening the hearing "Lessons Learned from the Upper Big Branch Tragedy" that was held two years ago on March 27, 2012. For several years now, it has been well-known what happened and what went wrong. Democrats have put forward legislation to prevent future Upper Big Branch disasters, Mr. Chairman, and we are puzzled why, with the facts in hand, you have not acted.

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<sup>1</sup>The four investigation reports were issued by: MSHA, the West Virginia Governor's Independent Investigation Panel, the United Mine Workers of America, and the State of West Virginia's Office of Miners' Health, Safety and Training. The two performance assessments were MSHA's "Internal Review of MSHA's Actions of the Upper Big Branch Mine-South" and NIOSH's "Independent Panel Assessment" of MSHA's Internal review. Excluded from this list is a report released by Massey Energy's former Chairman of the Board, which contended that the explosion was caused by an unforeseeable massive natural gas outburst and that the mine was properly rock dusted. Alpha Natural Resources, which acquired Massey Energy, disavowed the unauthorized release of this report.

We agree with your statement that the genesis of this disaster “lies in Massey’s corporate culture that valued profit over safety.” You have properly noted that “when workers are needlessly put in harm’s way, federal enforcement must require corrective action and hold mine operators accountable.”

Effective federal enforcement depends on both adequate laws and vigilant oversight of conditions in the mines. The March 27, 2012 hearing underscored gaps on both fronts. While MSHA has stepped up to close the gaps in its performance, the Congress has not closed the gaps in the law.

Assistant Secretary Joe Main noted that the tragedy at UBB “shook the very foundation of mine safety” and caused MSHA “to take a deeper look at the weaknesses in the safety net expected to protect the nation’s miners.” MSHA’s Internal Review identified 100 action items, and work on 95 of these actions items was completed by December 31, 2013. The 5 remaining areas that require further work—such as entering into Memoranda of Agreements with states or securing resources to implement succession plans—will depend on actions by states or Congress. Nonetheless, MSHA is pressing forward to 100% completion. At your request, the Department of Labor’s Inspector General oversaw MSHA’s efforts, and found that MSHA “implemented an aggressive implementation schedule for the recommendations in its Internal Review report, and has so far met its targets.”<sup>2</sup>

But it is clear that administrative reforms alone cannot compensate for inherent weaknesses in the Mine Act.

Families of UBB miners have asked us to act on legislation to deter the kinds of egregious misconduct that led to this tragedy. MSHA has asked us to provide it with additional, critically important tools to help it overcome well-documented shortcomings in the law.

Testimony provided to the Education and Workforce Committee, coupled with the findings and recommendations in the investigation reports, supports the need to adopt measures to:

- 1) Deter and prevent mine operators from providing advanced notice of inspections to hide violations and hazards from enforcement personnel;
- 2) Increase the consequences for operators who intimidate miners as a way to discourage them from stopping unsafe work or reporting hazards to MSHA;
- 3) Provide MSHA with subpoena authority necessary to uncover malfeasance, such as keeping two sets of books as a way to conceal hazardous conditions from MSHA; and

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<sup>2</sup> MSHA is Making Progress to Implement the Upper Big Branch Internal Review Recommendations and is Undertaking Actions on the Independent Panel Report, Office of Inspector General, U.S. Department of Labor, March 31, 2013.

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- 4) Provide a meaningful deterrent for mine operators who show a criminal disregard for the lives of miners.

The Robert C. Byrd Mine Safety Protection Act, which was updated and reintroduced on March 21, 2013, closes these four gaps in the Mine Act, and gives prosecutors the tools they needed to help deter misconduct by the small percentage of mine operators who value profit over safety. The Mine Act provides that willfully violating mine safety standards which results in the death of 29 miners is a mere misdemeanor. The failure to address a weakness this flagrant is an embarrassment.

Four years after this tragedy, and two years after all of the investigation reports have been finalized, inaction by this Congress on needed legislation is both glaring and inexcusable. There is only one message being sent to the UBB families: Congress is closing their ears to their pleas. It is harsh conclusion, but the lack of action leaves the unmistakable impression that Congress as an institution is indifferent to the blood shed by these miners.

Since the March 2012 hearing, this Committee has not held a single hearing on mine safety. Issues that concern miners' safety and health have fallen off the radar screen during this Congress.

There is still time in this Congress to bring a bill to a markup and the floor of the House for a vote. We are ready and willing to enter into discussions to find common ground. Mr. Chairman, I hope you will decide that the loss of these 29 miners' lives was not in vain.

Sincerely,



**GEORGE MILLER**  
Senior Democratic Member



**JOE COURTNEY**  
Ranking Member  
Subcommittee on Workforce Protections