

Opening Statement of Mark Takano, Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Reviewing the Policies and Priorities of the Mine Safety and Health Administration
Tuesday, February 6, 2017

Chairman Byrne, thank you for holding this hearing today on mine safety. The last time this Committee held a mine safety hearing was nearly two-and-a-half years ago, and there are a number of urgent issues that need to be addressed.

Today, the *Journal of the American Medical Association* published an article documenting the single largest cluster of advanced black lung cases ever reported in the medical literature. NIOSH (Nye-Osh) verified 416 cases of progressive massive fibrosis – or PMF – in three small black lung clinics in southwest Virginia, and researchers believe there are even more cases yet to be verified. Moreover, this report left out wide swaths of Appalachian mining communities that are likely affected as well.

[Slide One – Black Lung Images]

PMF is a debilitating, often fatal disease. The three pictures displayed on the screen illustrate the gravity of this health condition.

- The photo on the left shows a normal lung.
- The photo in the center shows the lung of a miner with black lung disease. This lung has coal nodules embedded throughout. A miner with this level of disease would have great difficulty breathing.
- The photo on the right shows the lung of a miner with PMF. The lung is filled with large masses of dense black tissue. A miner with PMF would find it nearly impossible to walk across this hearing room. Without a lung transplant, this is a death warrant. Even with a lung transplant, it would only add a few years to their life.

[Slide Two – Chart of PMF]

As you can see on this chart, the documented cases of PMF have been on the rise since the late 90's. What we are witnessing today is a health crisis that requires an immediate response.

I hope we will hear what the Assistant Secretary plans to do about this documented surge in PMF cases. It's clear that this cannot be solved by rolling back rules that protect miners, including MSHA's respirable dust rule.

[Remove Slide from Screen]

April 5th of this year marks the 8th anniversary of the Upper Big Branch mine explosion, which took the lives of 29 miners in America's worst coal mine disaster in 40 years.

The cause, according to numerous investigative reports and a criminal trial, was the reckless conduct of Massey Energy's corporate executives, who consistently put coal production ahead of safety. Tools that MSHA could use to hold Massey, and other rogue mine operators accountable were rendered

ineffective. This Committee heard testimony from coal miners, mine inspectors, mine engineers, agency officials, and the families of the Upper Big Branch miners about specific weaknesses in the Mine Act that need to be remedied.

The majority said we should wait on legislating until all of the investigative reports come in. The last of the six reports was completed in February of 2012. But still, the Committee has been unwilling to move even one of the dozens of recommended reforms. Let me highlight three of these key reforms, which are in the Robert C. Byrd Mine Safety Protection Act of 2017 (HR 1903), introduced by Ranking Member Bobby Scott.

- **First, it provides MSHA with subpoena authority to conduct inspections and investigations.** An agency whose mission is protecting miners from serious injury or death needs this basic tool;
- **Second, it authorizes a felony sanction for criminal violations of the Mine Act.** The current sanction is a misdemeanor. Federal judges and prosecutors, as well as editorial pages across coal country, have criticized the misdemeanor sanctions as inadequate to deter the most egregious misconduct.
- **Third, it codifies the Pattern of Violations regulations adopted by MSHA.** This addresses the small subset of mine operators who systematically violate safety standards.

Pattern of Violations has a history that dates back to the Chairmanship of Carl Perkins, who was responsible for the passage of the 1977 Mine Act, which created the Mine Safety and Health Administration.

In 1976, following two successive explosions at the Scotia Mine that took the lives of 23 miners and 3 federal mine inspectors, Congress learned the mine had been ordered closed 110 times in the 6 years prior to the explosion and regulators issued 420 safety and health violations in the two years prior to the explosion.

Repeated citations were not an adequate deterrent.

Congress included in the 1977 Mine Act the “pattern of violations” sanction, which gives MSHA an additional tool to rein in serial violators who systematically disregard the safety of their miners. Once on this sanction, each and every time there is a “significant and serious” violation, operators must withdraw miners from the mine until the violation is corrected. Unless a mine remains free from “significant and serious violations for 90 days,” it cannot be removed from this sanction.

This provision of law was not implemented for 33 years, according to the Inspector General, because of loopholes in the implementing regulations.

MSHA finally plugged these loopholes in 2013 following the Upper Big Branch disaster.

In 2014, Murray Energy, the Ohio Coal Association, and the Kentucky Coal Association sued to overturn MSHA’s 2013 rule. Following a change in the Administration, these plaintiffs sought settlement discussions.

Assistant Secretary Zatezalo who has joined us today, previously chaired both the Ohio Coal Association and the Kentucky Coal Association.

I have serious questions about whether the Assistant Secretary can have any role in these settlement negotiations. At a minimum, there is an appearance of a conflict of interest, which highlights the need for transparency in the closed-door negotiations with the plaintiffs.

I thank the Assistant Secretary for appearing here today and welcome his testimony.