Michael J. Wright
Director of Health, Safety and Environment
United Steelworkers
Testimony before the
Committee on Education and Labor
Subcommittee on Workforce Protections
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on the
S-MINER Act (H.R. 2768) and Miner Health Enhancement Act (H.R. 2769)
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Madam Chair, Congressman Miller and other members of the Subcommittee, my name is Michael Wright. I am the Director of Health, Safety and Environment for the United Steelworkers, a union representing 850,000 workers in North America, including the majority of unionized metal and non-metal miners in the United States and Canada.

Last year, I had the honor of testifying at the February 13 Congressional Forum on Mine Safety and Health convened by Congressman Miller. Let me say what a pleasure it is to be here today, at an actual Congressional hearing considering mine safety – a hearing examining what more we should do after the passage of the MINER Act and the new MSHA rules that resulted from it. Let me also express our gratitude to Congressman Miller, Congresswoman Woolsey, and all the members of the committee who helped pass that legislation and who continue to support safe working conditions, not just for miners, but for all Americans.

Dennis O'Dell and Jim Weeks have talked about the need for this legislation in coal mining. Indeed, most of the MINER Act and much of H.R. 2768 is focused on underground coal mines. That is appropriate, given the terrible death toll in underground coal mines last year. However MSHA's jurisdiction extends to many mines beyond coal, and to surface mines as well. In 2004, there were 51,000 workers at underground mines, although many of them worked in surface operations like hoists and prep plants. There were 151,000 workers in surface mines. Coal accounts for about a third of our nation's miners – 73,000 out of a total of 222,000. Last year there were almost twice as many deaths in coal mining as in metal and non-metal operations (47 vs. 25), but in 2005, 35 metal/non-metal

miners died as against 22 coal miners. So far this year, that pattern is repeating, with 15 deaths in metal/non-metal and 9 in coal.

Deaths in metal and non-metal mines are as varied as the operations themselves. Let me give just a few examples, all from mines organized by our union. On January 31, 2005, David Wilson died at the Carmuse Corporation underground limestone mine in Butler, Kentucky, when the tractor he was operating flipped over and crushed him. The tractor had ridden up on a pillar. The front wheels were set very close together, so the tractor turned over easily. It also had no roll-over protection.

On October 11, 2006, Andrew Reed was electrocuted at the Cleveland Cliffs United Taconite mine in Eveleth, Minnesota. He was a supervisor doing electrical troubleshooting.

On January 2 of this year, John Dorton was killed at the Alcoa alumina refinery in Point Comfort, Texas. He was hit with a sudden release of hydrogen fluoride while he was cleaning out a valve. The company had not supplied the right protective equipment; nor was the valve cleaning operation sufficient to prevent the release. That plant is not a mine in the traditional sense, but because it processes minerals it is rightly under MSHA's jurisdiction.

On April 18 of this year, Deane Driscoll died at same United Taconite mine in Eveleth, Minnesota where Andrew Reed died six months earlier. He was operating a large mobile drill when several bolts snapped off a stabilizing cylinder, one by one, each failure leading to the next, causing the drill to tip and ejecting him from the cab. We do not yet know why the bolts failed, but they were either poorly designed or defective in their manufacture.

Over the past few years, metal/nonmetal miners have also died in rock bursts, roof falls, fires, falls from height, in explosions and in many other ways. These deaths normally occur one at a time. They do not make the national news. But taken together, the toll is far greater than the toll from disasters like Sago. Of course, in the long run even more miners die from health hazards like coal dust, silica and diesel exhaust, and those deaths do not appear in the official statistics.

Some of the changes over the past year will make a real difference. The new penalty structure gives MSHA increased authority to punish chronic violators, although the S-MINER Act would make further improvements. Immediate notification of accidents allows MSHA to better control an accident scene, and to

help ensure that the problem does not spread further. After years of controversy, the metal/nonmetal diesel standard is finally in place, and should be free from further court challenges. Your committee facilitated many of these changes, either directly through the MINER Act, or by just keeping the heat on the Department of Labor.

But more is needed. The S-MINER and the Miner Health Enhancement Acts would be great steps forward, and we are enthusiastic supporters of both. At the same time, both could benefit from some fine-tuning. Let me discuss three aspects of the bills in particular.

First, we believe that many of the provisions of the MINER Act and the S-MINER Bill, designed to protect miners in emergency situations, should be extended to metal/nonmetal mines. We certainly support the advisory committee required by Section 4(j) of H.R. 2768, but some things could be done now. One example is the use of flame-resistant conveyor belts. Belt fires are less risky in metal/nonmetal mines, since the belts generally carry non-flammable materials. But belt fires are still a potential hazard, and there is no reason to allow inferior belts in any mine.

We also believe that self-contained self-rescuers should be required in most underground metal/nonmetal mines. It is ironic that much of the impetus for SCSRs came from the 1972 disaster at the Sunshine Mine near Kellogg, Idaho – a silver mine – where an underground fire killed 91 miners, all from carbon monoxide poisoning. Most of them were members of our union. Some of the factors that led to the fire have been eliminated by MSHA regulations, but 45% of the mine fires reported to MSHA between 1991 and 2000 occurred in metal/nonmetal mines.[1] There are plenty of combustible materials in such mines – belts, fuels for mobile equipment and mobile equipment itself,[2] old timbers,[3] methane, combustible ores like gilsonite and other materials. The January 2006 fire in a Saskatchewan potash mine, which forced 72 miners into a refuge chamber for 28 hours because of toxic gases and smoke, started in some plastic piping. In short, there is no reason why Congress should not require MSHA to initiate prompt rulemaking extending the protection of SCSRs to underground metal/nonmetal miners.

[1] Ronald S. Conti, "Responders to Underground Mine Fires," NIOSH Pittsburgh Research Laboratory.
[2] Forty-six percent of metal/nonmetal fires in the study cited above involved mobile equipment.
[3] Old timbers were a major cause of the Sunshine Mine fire, and more recently, a February 8, 2001 fire at the Homestake Gold Mine in Lead, SD, which required the evacuation of 37 miners.

Second, let me comment briefly on the role of the Chemical Safety and Hazard Investigation Board, as contained in Section 6(g)(3) of H.R 2768. We are great fans of the CSB; they have done a superb job in recent investigations, especially the investigation of the March 23, 2005 disaster at BP's Texas City Refinery, of which this Committee is well aware. The CSB could be quite useful in the investigations of chemical accidents, like the fatal hydrogen fluoride release at Alcoa Point Comfort which I mentioned earlier. But they have no expertise in mine issues like roof falls or belt fires. The CSB is needed outside of mining, because OSHA typically does not do accident investigations beyond what is needed to determine compliance. Nor does OSHA issue accident reports. MSHA, however, does. And in our experience, MSHA's accident reports are excellent, concentrating on root causes well beyond mere compliance issues. The USW represents most of the unionized workers in chemical plants and oil refineries. That is where we need the CSB, not in duplicating what MSHA already does well.

Nevertheless, there should be a limited role for the CSB in mining. First, MSHA should have the ability to ask the CSB for help in the areas of its expertise, such as where dangerous chemicals are involved, or in explosions. Second, the CSB should have the power to initiate its own independent investigations in chemical safety matters in mining. It can be argued that the CSB already has that authority, but the S-MINER Act could clarify it.

Third, and turning to H.R. 2769, we applaud the bill's authors, Congressmen Miller and Rahall, for addressing the issues of air contaminants, asbestos and hazard communication. As the bill recognizes, the MSHA air contaminant standards are badly out of date. We agree that the NIOSH Recommended Exposure Limits provide the best list through which the new and more protective permissible exposure limits could be established quickly. However, there are two problems with this approach which will have to be overcome. Many of the carcinogens referenced by NIOSH do not have quantitative PELs. Instead, they are simply designated as carcinogens, with the implication that they be controlled to the lowest feasible level. Two examples are cadmium and welding fumes. "Lowest feasible level" works fine as a recommendation, but it lacks the specificity required for a regulation. One solution would to be to default to the consensus standards established by the American Conference of Governmental Industrial Hygienists where a numeric REL does not exist. After all, the ACGIH threshold limit values were the basis for the first set of MSHA and OSHA air contaminant standards.

The other problem is potentially more serious. Many of the NIOSH RELs were adopted without a consideration of technological feasibility, particularly in

mining. It would be nice to set standards solely on the basis of health effects, but up until now the laws governing OSHA, MSHA and hazardous air pollutants under EPA have always recognized that standards must be not only protective, but must be feasible as well. Therefore, we would suggest a slight modification of H.R. 2769 which would give MSHA the discretion (but not the requirement) to modify the PEL through notice and comment rulemaking if the Agency determines that the NIOSH REL may be infeasible in mining.

We support Section 4 of the bill, on asbestos, with one addition. MSHA should certainly adopt the OSHA standard for asbestos, but should be free to add additional provisions. For example, MSHA might wish to include additional asbestiform minerals to the coverage of the standard, or work practices applicable to mining.

Finally, we fully support Section 5, which would require MSHA to go back to the October 2000 Interim Final Rule on Hazard Communication in lieu of the June 2002 final rule. Under the interim final rule, suppliers had to update material safety data sheets whenever the ACGIH or recognized international organizations like the International Agency for Research on Cancer updated their recommendations. Under the final rule, suppliers can now withhold that information from users.

We've talked to chemical suppliers who think this change was brainless. They have no intention of writing different MSDSs for OSHA and MSHA jurisdictions. I have also talked to two tort lawyers who, when they stopped laughing, said how stupid this change really was. Imagine a case where a worker or consumer was harmed by product labeled under the MSHA rules. Suppose it became known that, not only had the supplier failed to disclose the latest information to the user, but had even lobbied the government for the right to cover it up. The liability would be enormous. For the good – not only of miners – but for the industry itself, Congress should reverse this absurdity.

Again let me express our support for both the bills before you. The handful of changes we recommend are minor; we believe they could be made easily.

Thank you again, Madam Chair for the opportunity to testify and for your efforts on behalf of miners and all working Americans.