

United Mine Workers of America



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June 19, 2009

Mr. Timothy Rehak
Center for Disease Control
P.O. Box 18070
626 Cochrans Mill Road
Pittsburgh, PA 15236

Dear Mr. Rehak:

As indicated in the comments submitted today by the United Mine Workers of America on RIN:0920-AA10; Approval Test and Standards for Closed-Circuit Escape Respirators, we are sending copies of the attachments referenced in our comments under separate cover by mail. The documents were too large to be transmitted electronically via e-mail. Please include these attachments as part of the record with our comments submitted by e-mail on June 19, 2009 on this proposed rule.

I thank you in advance for your cooperation in this matter.

Sincerely,

Dennis O'Dell, Administrator
Department of Occupational
Health and Safety

**Comments of the United Mine Workers of America
On the Notice of Proposed Rulemaking:
Approved Tests and Standards for Closed-Circuit Escape Respirators
73 FR 75027-45, (December 10, 2008)**

ATTACHMENTS

The following documents were referenced throughout comments of the United Mine Workers of America:

- (1) An Act Federal Mine Safety and Health Act of 1977; Public Law 91-173 as amended by Public Law 95-164 and Mine Improvement and New Emergency Response Act of 2006 (MINER Act) ; Public Law 109-236 (S2803)
- (2) The United Mine Workers of America, AFL-CIO/CLC Report on the Sago Mine Disaster of January 2, 2006.
- (3) United Mine Workers of America Testimony of Cecil Roberts before the U.S. Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Wednesday, February 28, 2007 Hearing Room 124 Dirksen Senate Office Building Washington, DC.
- (4) Cecil E. Roberts, International President United Mine Workers of America Testimony before the United States House of Representatives Committee on Education and Labor Wednesday, March 28, 2007 Rayburn House Office Building Room 2175 Washington, DC.
- (5) Cecil E. Roberts, President United Mine Workers of America, International Union Testimony before the U.S. Senate Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Wednesday, September 5, 2007 Hearing Room SD-124 Dirksen Senate Office Building, Washington, DC.
- (6) Comments of the United Mine Workers of America regarding the Emergency Mine Evacuation Emergency Temporary Standard published in the Federal Register Volume 71, Number 46 on March 9, 2006.

**Cecil E. Roberts, International President
United Mine Workers of America
Testimony before the
United States House of Representatives
Committee on Education and Labor**

**Wednesday, March 28, 2007
Rayburn House Office Building
Room 2175
Washington D.C.**

On behalf of the United Mine Workers of America (UMWA or Union), I would like to thank Chairman Miller (D-CA) for calling this hearing before the Education and Labor Committee to continue the discussion about coal mine health and safety. I would especially like to thank Congressman Miller for his steadfast and continuing support of the Nation's miners. Your efforts along with those of the entire West Virginia delegation and others have been instrumental in advancing and protecting miners' health and safety. The MINER Act passed last year, was the first new mine health and safety bill to be enacted by Congress in nearly 30 years. The Union believes that legislation is a good first step, but more must be done if we are to eliminate the conditions that led to the deaths of 47 coal miners last year.

The disasters of 2006 focused the attention of the Nation on the mining industry. Unfortunately, as it has been in the past, it took several mining disasters and the loss of many lives before the Nation understood the dangers miners face daily. The tragic events of 2006, which played out in newspapers and television nationwide, finally forced Congress to take action. This reality is too often the case. Almost without exception health and safety protections miners need are ignored until a mine explosion or fire claims their lives and creates a public outcry for change. The 1969 Coal Act was a response to an explosion in Farmington, West Virginia on November 20, 1968, that took the lives of 78 miners, 19 who still remain entombed in that mine.

While the Coal Act was an improvement for miners, subsequent hearings in Congress showed that hundreds of miners continued to be killed each year in the Nation's coal mines. This reality forced Congress to pass the Federal Mine Safety and Health Act of 1977 (Mine Act). This legislation enhanced protections for coal

miners and created the Mine Safety and Health Administration (MSHA) to promulgate and enforce mining laws nationwide.

Since the Coal Act was passed, fatalities in coal mining have decreased dramatically: while over 300 miners died in 1968, the year before the Coal Act was enacted, since 1985 fewer than 100 miners have perished in any single year. These numbers continued to decline until last year when 47 miners died on the job; the highest single year death toll since 1991. While increased mechanization has meant fewer miners are engaged in coal mining, the fatality rate has also dropped significantly. This is commendable; but we can – and must – do much better.

Mining is inherently dangerous and remains the second-most dangerous industry in this country. This nation possesses the knowledge and ability to substantially improve miners' health and safety, and to reduce the fatality rate.

Since its inception some mine operators have resisted the authority of MSHA to regulate the industry. In some instances they have been successful in turning back the clock to the days before passage of the Mine Act. Many of the mandates enacted by Congress in that legislation have been weakened or eliminated. The use of belt-air to ventilate working places where miners are extracting coal was strictly prohibited by Congress, but has been approved by MSHA and is now a common practice in the industry. The requirement for explosion-proof or bulkhead seals to separate working areas of the mine from worked out or abandoned areas is no longer a reality. The industry, through MSHA, has manipulated and subverted the system Congress created to protect miners. The law has been circumvented by MSHA by permitting the use of alternative materials for the building of seals, as was the case at Sago mine, where they catastrophically failed.

Unfortunately, what happened at Sago, Alma, and Darby, three accidents that alone claimed the lives of 19 miners in 2006, should not have come as a surprise to anyone. Indeed, the underground coal industry has experienced tragedies, as well as near tragedies, on a recurring basis. On September 23, 2001 – two short weeks after 9-11 – at the Jim Walters Resources #5 mine in Alabama there was a terrible series of events that echoed the Twin Towers' experience inasmuch as numerous rescuers also perished during a heroic rescue effort. At the Jim Walters mine, 12 of the 13 miners lost their lives in a second explosion while trying to rescue a miner who had been immobilized by an explosion that happened nearly an hour earlier.

Communication problems contributed to the deaths of the 12 rescuers; the rescuers were given insufficient and faulty information about the underground conditions, and unselfishly attempted the rescue without knowing the hazards they faced.

Then in July 2002, 9 miners were trapped by a water inundation at the Queecreek mine in Pennsylvania, after 9 others were able to escape. The trapped miners were rescued 4 days later; again communication inadequacies frustrated their rescue.

After the Jim Walters tragedy, and again after the Queecreek near-disaster, the need for better underground communications was crystal clear. Despite the clear lessons to be learned from these events, MSHA made no changes to require better communications or technology to locate trapped miners.

In 2006, the coal industry suffered a series of multi-fatal tragedies. A total of 47 miners lost their lives last year, including 12 at the Sago mine and 2 at the Alma mine both in January and both in West Virginia, then 5 more perished at Kentucky's Darby mine in May, and 28 others died one or two at a time throughout the nation. Typically miners die one or two at a time from roof falls, equipment failures, and other accidents.

Thousands of others are still disabled and dying from black lung disease.

There are also countless near-misses that occur on a regular basis. In just the last few years, MSHA has recorded hundreds of mine fires, ignitions, explosions and inundations that far too-easily could have developed into significant disasters and fatalities; many other incidents likely went unreported.

With better regulations, more regular and consistent enforcement, and with support from the highest echelons of the Agency, many of these accidents could have been prevented. Senseless deaths and injuries must stop. Mining will probably always be a dangerous job. But we can do a lot more than we are doing today to make it safer. Miners should not have to get sick, or to risk their lives just by going to work.

The sustained efforts by industry and government to erode the Mine Act has been devastating to miners. Many of the events of 2006 are rooted in regulations, policies, petitions for modification and practices MSHA has instituted at the behest

of mine operators. Many of these played a role in the mining deaths of 2006. Once again, miners were forced to wait until many of their fellow workers were killed on the job before the public and Congress were outraged enough to take long overdue action to better protect them.

The United Mine Workers of America has been representing coal miners for over 117 years. We have seen the effects of lax enforcement of mining laws by regulatory agencies and the harm that befalls miners when mine operators view regulations with indifference. These factors played a role in the September 23, 2001 explosions at the Jim Walter #5 Mine (JWR #5) that claimed the lives of 13 miners. The Union completed an investigation into the JWR #5 disaster and issued a comprehensive report, which I have included with my testimony. The Union is convinced that had the recommendations contained in that report been promulgated by MSHA, the disasters of 2006 would not have taken such a toll in human life.

As you may know, the Union recently released its findings regarding the Sago mine disaster. Since the release of our report, which is attached to this testimony, there has been much written about the ignition source of that explosion, and while it is important to make that determination as we believe we have, that must not be the focus of this tragedy. Based on our findings, no matter what the source, there can be no doubt that every one of the 13 miners trapped by the explosion should have survived. However, given the events that led up to this disaster and the decisions made prior to and immediately after it occurred by federal regulators and mine management; 12 of those miners died. This is the unfortunate result of MSHA ignoring the mandates of Congress outlined in the 1969 Coal Act and the 1977 Mine Act and bowing to the wishes of the coal industry. Therefore, while the Union understands the need to enhance miners' protections with new legislation and regulations, we must also correct the errors of the past and force mine operators and the Agency to strictly adhere to the previous orders of Congress. The UMWA believes that many of the protections Congress mandated have been taken away or watered down over the years and only Congressional action will force the necessary corrections to be instituted.

The UMWA concluded that conditions at the Sago mine leading up to the disaster were the direct result of actions taken by MSHA immediately preceding the explosion as well as years of regulations, policies, petitions for modification and practices that weakened miners' protections by the Agency. The Union's report

identifies these bad decisions by MSHA and the International Coal Group (ICG) created at Sago mine including:

- Use of alternative seal material;
- Flawed ventilation plan;
- Inadequate oxygen;
- Problems with mine rescue teams;
- Need for more coal mine inspectors;
- Need for tracking devices;
- Need for better communications systems;
- Ineffective training;
- Poor mining plans;
- Lack of seismic equipment;
- Delayed response to initial explosion; and
- Lack of safety chambers or safe havens.

The Union's report of the Sago disaster demonstrates the failures that occurred on many levels by both industry and the government permitting this tragic accident to take the lives of 12 miners on January 2, 2006. There is no single event that created these conditions. The explosion and loss of life was the culmination of many bad decisions by the mine operator and regulators. To view this otherwise distorts the reality of the situation and restricts our ability to correct these mistakes and oversights to ensure no miner or miners' family will face a similar tragedy.

MSHA knows how to do better. The Agency itself has performed countless internal reviews and self-analyses; the federal government's watchdog agency, the GAO, has given it direction, and the UMWA has communicated both formally and informally about how MSHA can and must do better.

Several years ago, the GAO focused on shortcomings in MSHA's performance with regard to the underground coal industry. The GAO issued its report in September 2003, two years after the Jim Walters tragedy. In its report the GAO noted that MSHA headquarters was not performing adequately in several key areas. Specifically, the GAO found MSHA failed to ensure violations cited to mine operators were corrected in a timely fashion. In fact, the GAO found that of all the citations issued by the Agency, including those written as "significant and

substantial,” despite inspector-imposed deadlines by which problems were to be abated, 48% of the time the Agency failed to follow-up in a timely fashion to see if the operator fixed the hazards.

The GAO also found that MSHA collected information about accidents and investigations, but then failed to use the information effectively to prevent future accidents. It further found that MSHA failed to ensure that the ventilation and roof control plans are reviewed every six months, even though the Mine Act and applicable regulations, as well as MSHA’s long-standing policies, require that these reviews occur on a semi-annual basis.

After MSHA completed its investigation into the Jim Walters disaster, the Agency also performed an Internal Review of MSHA’s actions before the explosions to “improve our inspection process to better protect our nation’s miners.” The review compared what MSHA actually did with what the Mine Act requires it to do. A number of problems were identified as deficiencies “at both the district and headquarters level”, deficiencies “relevant to inspection procedures, level of enforcement, plan reviews, the [Alternative Case Resolution Initiative] and accountability programs, supervision and management, and headquarters oversight.” The GAO is presently engaged in another review of MSHA’s performance and we look forward to learning what it will find.

I would also recommend that Congress review the MSHA Internal Review of its own actions regarding the Pyro explosion of 1989. Many of the deficiencies noted in the 2001 GAO report, the JWR #5 report and the UMWA Sago report sadly parallel in this Internal review completed some 15 years ago.

Just last month, I had the privilege of testifying before the U.S. Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies in an effort to explain to that subcommittee what improvements miners have seen since the passage of the MINER Act. Unfortunately, I had to report to that Subcommittee then, and to this Committee today, that very little has actually changed for rank-and -file miners since January of last year. The reality is that if Sago, Alma or Darby happened today the results would very likely be the same. The men who should have escaped those tragedies over a year ago still could not do so today because little progress has been made.

The reasons for this can be traced to several sources including past decisions by MSHA that lessened the protections afforded miners by the 1969 Coal Act and the 1977 Mine Act. As I stated before, MSHA has not moved aggressively to implement all the provisions of the MINER Act. MSHA is seeking to delay requiring certain improvements be implemented until the final dates Congress established rather than moving aggressively forward on these important issues. There appears to be no urgency on the part of MSHA to push for new regulations any sooner. There is also resistance on the part of some segments of the industry to the implementation of new protections for miners. In fact, the National Mining Association (NMA) sued MSHA over the method by which it is requiring operators to provide additional oxygen in coal mines. These problems must be corrected if we are to comply with the mandates of Congress and afford miners greater protections.

The MINER Act includes several important provisions aimed at helping miners *after* a mine emergency develops. It is most appropriate for you to consider whether the improvements Congress intended to accomplish through that legislation are being realized. The Union supports MSHA's efforts to require substantially more oxygen for every miner. The emergency mine evacuation rule also contains a number of important improvements. Having said that, my testimony will focus attention on areas that MSHA needs to focus its attention to fully implement the MINER Act.

Some of the inadequacies in implementing the MINER Act may be linked to insufficient resources. However, others can be tracked to decisions made by the Agency. In 2001, then Assistant Secretary for Mine Safety and Health, David Lauriski told members of the National Mining Association that MSHA would, "collaborate more with mine operators on regulatory initiatives" and become "less confrontational with mine operators, in an effort to provide companies with better compliance assistance." At a meeting with mine operators in Hindman, Kentucky, he bragged about his diminutive regulatory agenda. He noted, "if you've seen it you noticed its quite a bit shorter than some past agendas." These policy statements were accompanied by a withdrawal of many proposed regulations by MSHA and a noticeable shift to compliance assistance. These compliance assistance programs diverted precious resources away from enforcement. If history has taught us one thing, it should have taught us that the industry cannot police itself. MSHA must shift its focus from compliance assistance to stronger

enforcement. Perhaps most tragically, in many cases, MSHA has ignored the mandates of Congress by adopting regulations and policies that place miners at greater risk.

Mine Inspectors / Mine Inspections

The Agency is experiencing great difficulty in fulfilling the mandatory inspections required under the Mine Act. The Union is convinced that the hiring and training of more MSHA inspectors must be a top and continuing priority. The Agency must have a full complement of properly trained personnel if it is to perform its primary job of enforcing the Mine Act. The ranks of the inspectors have been diminished over the years and we can expect further reductions as more of MSHA's long-time inspectors leave the profession as they reach retirement age. These needs can only be filled by hiring qualified individuals from all segments of the industry, including rank and file miners. These new inspectors must also be outfitted with state of the art equipment for personal protection and to perform their mandated inspection duties. Sufficient monies must be allocated to ensure this equipment is readily available to these inspectors.

As the number of inspectors have decreased, MSHA's field office specialists, including ventilation specialists and its electrical and roof control support staff, have been forced to carry out routine mine inspections. These specialists must be returned to their areas of expertise. The only way to accomplish this is to hire an adequate number of inspectors which will permit the specialists to focus on the job they were trained to do. In addition, the Agency must move immediately to train a sufficient number of inspectors to perform these technical tasks in the future.

We certainly appreciate Senator Byrd's efforts last year to secure to secure \$25.6 million dollars to hire an additional 170 mine inspectors. Congress still must ensure that funding levels at the Mine Academy in Beckley, WV remain sufficient to meet future training needs for mine inspectors. This facility is used to train mine inspectors and also offers comprehensive training for miners and other health and safety experts.

Seals

In 1977 Congress mandated that "explosion proof seals or bulkheads" be used to

isolate abandoned or worked out areas of the mine from active workings. However, in the years since, MSHA has promulgated regulations regarding seals that are much less protective than what Congress mandated. The current regulation simply requires that seals withstand static pressure of 20 pounds per square inch (psi) in order to be approved for installation in the mine. The standard was further eroded when MSHA approved the use of alternative seal material including Omega Block type seals, that were used at Sago. These Omega Block seals catastrophically failed as a result of the explosion and contributed to the deaths of all twelve miners.

The UMWA urges MSHA to promulgate a regulation that would require the construction of seals that meet the mandates of Congress and the recommendations in NIOSH's draft report on mine seals.

Further, the Union recognizes that increasing seal requirements is not sufficiently protective of miners. MSHA must promulgate regulations that force mine operators to monitor the atmospheric conditions that exist in sealed areas of the mine. This monitoring must be done in enough locations behind the seals to effectively demonstrate the conditions that exist in that area at all times. The regulation must also require immediate action be taken by the mine operator when these sealed areas pose a threat to the health and safety of the miners.

Regulations

As I stated previously, under David Lauriski 17 rules and regulations that would have provided health and safety protections to miners were withdrawn. The UMWA believes that MSHA should adopt an aggressive regulatory agenda to address important issues in addition to those contained in the MINER Act, including:

1. Improved Atmospheric Monitoring Systems
2. Develop a Nationwide Emergency Communication System
3. Revise MSHA's Approval and Certification Process for Equipment Approval
4. Occupational Exposure to Coal Mine Dust (lowering exposure limits)
5. Collection of Civil Penalties (mandatory mine closures for non-payment)

6. Air Quality Chemical Substances and Respiratory Protection Standards (update personal exposure limits)
7. Surface Haulage (truck, haul road, train and loadout safety)
8. Respirable Crystalline Silica Standard (reducing quartz standard)
9. Requirements for Approval of Flame Resistant Conveyor Belts
10. Confined Spaces (tight quartered work areas)
11. Training and Retraining of Miners (revision of Part 48)
12. Surge and Storage Piles (dozer/feeder safety surface)
13. Escapeways and Refuges
14. Accident Investigation Hearing Procedures (make them public)
15. Verification of Surface Coal Mine Dust Control Plans
16. Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines
17. Modify Conferencing Process (Appeals of Citations)
18. Underground Coal Mining, Self-Contained Self-Rescuer Service Life Approval and Training.

Recording Fatal Accidents

Several weeks ago MSHA issued new guidelines for determining what constitutes a mine related fatality. The "Fatal Injury Guideline Matrix" narrows the scope of what the Agency will define as a fatal accident, chargeable to the mine operator. This will allow the Agency to report numbers that are artificially low and possibly skew the actual health and safety record of the mine and the industry. In addition, fatalities not listed as mine-related will not get the same scrutiny as a chargeable accident. Without the formal investigation process, lessons learned will not be available to prevent similar events in the future.

The Union also disagrees with the Committee established by the Agency to review deaths where chargeability is in question. The Committee is made up of upper-level MSHA employees and not open to other agencies, organizations or the public. This type of structure does not lend itself to a fair, unbiased review of fatal accidents.

Implementation of the MINER Act

In the MINER Act, Congress mandated timelines for its implementation. In some

cases, MSHA has failed to meet these deadlines. The Union urges Congress to allocate adequate funding to MSHA so it can fully implement this Act within the time frames set by Congress. In those instances where a more expedited implementation time is possible, as has been demonstrated in some mining states like West Virginia and Illinois where rules for emergency shelters, emergency communications and tracking devices, mandating SCSR inspections and belt-air issues have been adopted, the Union urges Congress to require MSHA to do so. Miners cannot fully benefit from the protections mandated by Congress unless there is an urgency on the part of MSHA to move forward aggressively with new regulations.

Emergency Mine Evacuation Rule

The Emergency Mine Evacuation Rule, which is separate from the MINER Act but ties into the self-contained self-rescuers (SCSRs) requirements, was finalized and made effective December 8, 2006. However, miners working underground today do not have all the protections that Rule addresses. MSHA deems the operator to be in compliance with the Rule if it has placed an order for additional SCSRs. Although the Rule requires increased availability and storage of SCSRs, there is a backlog of orders for these life-sustaining units. While the Union is extremely frustrated that more than a year after the Sago and Alma disasters, many miners only have one additional hour of oxygen, in light of this backlog, the Union supports MSHA's approach to make the additional oxygen units equally available to all miners. In reality, it will still take a number of years before miners receive the protections mandated by Congress. Miners cannot wait for another mine disaster to occur to drive new technology, therefore, the Union strongly urges the development and approval of the next generation SCSR. These devices must be positive pressure units with full face masks and dockable oxygen canisters so that once they are donned it is not necessary to remove them until the miner reaches safety.

The Rule also requires "expectations" training on SCSRs. This would allow miners to experience the actual effects of donning a SCSR and attempting an escape. The practice units would allow miners to experience the breathing restriction and heating that SCSRs create, without risking their safety. While MSHA claims these practice units are not available for purchase, they are in fact available. The reason these devices are not being used by miners today is not

availability, it is cost. Many mine operators simply do not want to spend the money to buy them. This is unacceptable and while we commend MSHA for promulgating a rule that is intended to be "technology-driven," it must now enforce that rule.

Moreover, the finality of this emergency response and evacuation rule is somewhat uncertain because of the lawsuit filed by the NMA. Such legal maneuvers will only serve to delay the protections Congress mandated last year.

Congress understood the importance of requiring that mine operators have comprehensive emergency response plans at all their operations. The MINER Act permitted operators a 60 day period to prepare these plans and submit them to the Agency for review and approval. However, many of the mine emergency response plans that operators submitted were grossly inadequate, and not worthy of approval. We are now over six months beyond the deadline established by Congress. While we commend MSHA for not approving these faulty plans, we do believe it must be more aggressive and apply more pressure on the operators to get these plans completed. Unless MSHA takes decisive action and resolves all the remaining issues, miners will not get the mine emergency response improvements that Congress intended.

Further, the mine emergency response plans are to be reviewed and re-approved by MSHA every six months. We are already six months beyond the original plan due date. If those first plans are not yet approved and fully implemented, how can we expect MSHA to handle these semi-annual reviews? Perhaps MSHA needs more manpower to handle this task, but whatever the answer, until every operation has an approved plan in place, miners are not getting the protections Congress intended.

Communication and Tracking

Very little has changed in the last year concerning the ability to communicate with and locate trapped miners. While we have learned more about this technology and understand that much is available, very few operators have taken advantage of it. Communication systems and tracking devices are areas that MSHA must pursue more aggressively. Current communication and tracking technology, including one-way text messaging and two-way wireless systems, some of which are available now, must be immediately installed in all mines. Any system that can increase the ability for miners to escape a mine emergency, even if it is limited in scope is better

than what miners currently have, and must be utilized. The federal government, through NIOSH and MSHA, must fund and direct continued studies and research to develop the next generation of tracking and communication devices. As this newer technology becomes available, mine operators must be required to upgrade existing systems at all its operations.

Mine Rescue Teams

We are also troubled by MSHA's failure to undertake action to facilitate the creation and training of additional mine rescue teams. Congress in the MINER Act clearly outlined its intent regarding the need for additional mine rescue teams. In addition, the language clearly defines how this is to be applied at both large and small mines. While Congress allowed MSHA 18 months in which to prepare, finalize, and give effect to rules that increase and enhance mine rescue team requirements, so far MSHA has not addressed this need. The need is real, and it is immediate. In the not-too-distant future MSHA will need additional funding to certify that mine rescue teams are qualified, as contemplated by the MINER Act.

Over the past 20 years MSHA and some operators have weakened the intent of the current regulations regarding mine rescue protections. The existing mine rescue team structure is spread too thin. It takes a lot of time and much practice for any mine rescue team to function well. The UMWA has training facilities and is willing to provide mine rescue training and first responder training if we receive the necessary funding. Miners cannot afford to wait any longer for the training of new teams to begin.

Civil Penalties

The Union has completed an initial review of MSHA's *Criteria and Procedures for Proposed Assessment of Civil Penalties: Final Rule*, which it issued last week. While the Agency appears to have strengthened its approach toward operators who violate the law, especially those who are habitual offenders, a comprehensive assessment of the new regulation can only be made after implementation. The Union must see if this rule will be vigorously enforced and if the Agency intends to use the civil penalty regulation to ensure better compliance. Enforcement will be key to its success.

In any event, the Agency must do a better job of tracking and collecting fines once they are imposed. It should also escalate the pressure on mine operators who become delinquent or refuse to pay a final penalty. Finally, to the extent MSHA claims it does not have the authority to suspend mining operations for non-payment of fines, Congress should pass legislation to correct that problem.

MSHA Hotline

The Union has complained for some time that the current hotline system miners use to report hazardous conditions is ineffective. Recently, a member of the UMWA called the 800 number listed on MSHA's website to report a problem at the mine where he worked and was frustrated by problems he encountered. The individual who answered the call, a contract employee, did not have any knowledge of mining, making it extremely difficult for the miner to convey the message. Further, the individual at the call center was not remotely familiar with MSHA's District structure and was therefore uncertain which office should receive the complaint.

The Union has stressed on many occasions that the MSHA hotline should be staffed 24 hours a day, 7 days a week by MSHA personnel with an understanding of the mining industry and the Agency. The Union has recommended that the Agency establish a Mine Emergency Response Office (MERO) to immediately handle problems that occur at mining operations. The current practice of contracting this work out to call centers lessens miners' health and safety.

Belt-Air

In keeping with the mandates of Congress in the 1969 Coal Act, and the 1977 Mine Act, which strictly prohibits the use of belt-air to ventilate working places, the Union has historically been opposed to the use of belt-air to ventilate these areas. The 2006 Alma disaster is a reminder that there is no safe way to ventilate working sections using belt-air. This mine fire was intensified by air from the belt entry, and the contaminated air was dumped onto miners working inby. In addition MSHA must require that conveyor belts used in the mining industry be made of non-flammable material. Extensive research was done since the early 1980's by the government and mining community, but this was another one of the rules withdrawn by Mr. Lauriski.

In the MINER Act, Congress directed that there be created a Technical Study Panel to provide independent scientific and engineering review and recommendations with respect to belt air and belt materials; the Study Panel is then to issue a report to the Secretaries of Labor and Health and Human Services, as well as the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and Labor. While this Technical Study Panel has been constituted and had its first meetings earlier this year, we harbor serious reservations about its administration. Congress was silent as to its administration, but MSHA staff is providing the support personnel. If its first meetings are any indication, MSHA seems more invested in defending the belt air decisions it has already made, than simply servicing the Study Panel. Congress assigned this Study Panel to offer an "independent" review and recommendations, and we hope it can overcome MSHA's bias in favor of belt air.

Funding for Additional Programs and Health and Safety Protections

The Union would urge Congress to adequately fund other agencies and programs that advance the Health and Safety of the nation's miners. These include:

- Pittsburgh Research Center
- Spokane Research Center
- Lake Lynn Facility
- Appalachian Laboratory for Occupational Health and Safety in Morgantown, WV
- Approval and Certification Center
- Personal Dust Monitors (PDM)
- Colorado School of Mines

Conclusion

One year ago, I testified before the Senate Committee on Health, Education, Labor and Pensions to discuss and review the performance of MSHA and the overall state of mine health and safety. That testimony followed the first two disasters of 2006 at the Sago and Alma mines. At that time, I described many of the shortcomings in miners' health and safety.

I am sorry to report that MSHA's efforts over the past year would do little to

change matters today if a mine were to experience an explosion like the one at Sago, or a fire like the one at Alma; indeed the underground miners would likely fair no better than those who perished over one year ago. Thanks to the MINER Act, I can presume that any incident would be *reported* within the initial 15 minutes. However, there is no reason to expect that a sufficient number of mine rescue teams would respond quickly. This is because the last year has seen virtually no progress in either expanding the number or improving the proximity of qualified mine rescue teams.

MSHA still allows mine operators to ventilate working sections with belt-air, and non-flammable belts are still not required. Today there are no requirements that operators provide systems that would enable miners to communicate with the surface or vice versa. There is nothing in place that requires an operator to be able to locate trapped miners, and very few could do so. Safety chambers are not required, nor are safe havens prescribed. Most operators do not have a complete approved emergency response plan as required by the MINER Act. Many miners caught in a disaster would likely have one additional hour of oxygen as opposed to early 2006, but please remember that it took more than 40 hours for the first mine rescue teams to reach the miners at Sago.

We are most appreciative that Congress has worked towards increasing MSHA's budget so more mine inspectors can inspect mines to ensure compliance with the Mine Act. We implore MSHA to demonstrate a similar commitment to enforcing the Mine Act and to improving miners' health and safety so that our industry will never again experience another mine disaster like Sago or Alma. Technology is progressing on a daily basis and the UMWA urges MSHA to require mine operators to employ improvements as they become available.

Miners should no longer have to wait for a tragedy to strike before regulatory agencies and mine operators act responsibly. The blood of miners and the tears of widows and orphans are too high a price for adequate health and safety protections for all miners. The disregard for workers' protections demonstrated by the mining industry and the indifference of the Agency Congress created to protect them can no longer be tolerated. It is time that they are forced to take a proactive approach to protecting miners.

Congress understood prior to 1969 when it passed the Coal Act that the coal

industry could not be trusted to police itself, because miners lives would never be considered the top priority by some mine operators. In 1977 Congress reviewed the conditions of miners again and determined it must create a federal agency to enforce the law it had mandated. However, the tragic events of 2006 demonstrated that the Mine Safety and Health Administration has not fulfilled those mandates in many respects. It is time for the Agency to reestablish itself as the advocate for the coal miner. The UMWA believes that only Congressional action will ensure that happens. We cannot wait another 30 years to improve the lives of miners and their families. With the leadership of Congress and the assistance of the UMWA we are certain we will not have to.

It has been said that every health and safety law has been written with the blood of miners. When it wrote the Mine Act, Congress, in its infinite wisdom stated that this Nation's most precious resource is the "miner." This held true then and must hold true today and into the future.

Thank you.

Summary of Testimony of UMWA President Cecil E. Roberts
United States House of Representatives Committee on Education and Labor
March 28, 2007

The disasters of 2006 focused the attention of the Nation on the mining industry. Unfortunately, as it has been in the past, it took several mining disasters and the loss of many lives before the Nation understood the dangers miners face daily. The tragic events of 2006, which played out in newspapers and television nationwide, finally forced Congress to take action. This reality is too often the case. Almost without exception health and safety protections miners need are ignored until a mine explosion or fire claims their lives and creates a public outcry for change. The 1969 Coal Act was a response to an explosion in Farmington, West Virginia on November 20, 1968, that took the lives of 78 miners, 19 who still remain entombed in that mine.

While the Coal Act was an improvement for miners, subsequent hearings in Congress showed that hundreds of miners continued to be killed each year in the Nation's coal mines. This reality forced Congress to pass the Federal Mine Safety and Health Act of 1977 (Mine Act). This legislation enhanced protections for coal miners and created the Mine Safety and Health Administration (MSHA) to promulgate and enforce mining laws nationwide.

Since the Coal Act was passed, fatalities in coal mining have decreased dramatically: while over 300 miners died in 1968, the year before the Coal Act was enacted, since 1985 fewer than 100 miners have perished in any single year. These numbers continued to decline until last year when 47 miners died on the job; the highest single year death toll since 1991. While increased mechanization has meant fewer miners are engaged in coal mining, the fatality rate has also dropped significantly. This is commendable; but we can – and must – do much better.

Mining is inherently dangerous and remains the second-most dangerous industry in this country. This nation possesses the knowledge and ability to substantially improve miners' health and safety, and to reduce the fatality rate.

Since its inception some mine operators have resisted the authority of MSHA to regulate the industry. In some instances they have been successful in turning back the clock to the days before passage of the Mine Act. Many of the mandates enacted by Congress in that legislation have been weakened or eliminated. The use of belt-air to ventilate working places where miners are extracting coal was strictly prohibited by Congress, but has been approved by MSHA and is now a common practice in the industry. The requirement for explosion-proof or bulkhead seals to separate working areas of the mine from worked out or abandoned areas is no longer a reality. The industry, through MSHA, has manipulated and subverted the system Congress created to protect miners. The law has been circumvented by MSHA by permitting the use of alternative materials for the building of seals, as was the case at Sago mine, where they catastrophically failed.

Unfortunately, what happened at Sago, Alma, and Darby, three accidents that alone claimed the lives of 19 miners in 2006, should not have come as a surprise to anyone. Indeed, the underground coal

industry has experienced tragedies, as well as near tragedies, on a recurring basis. On September 23, 2001 – two short weeks after 9-11 – at the Jim Walters Resources #5 mine in Alabama there was a terrible series of events that echoed the Twin Towers' experience inasmuch as numerous rescuers also perished during a heroic rescue effort. At the Jim Walters mine, 12 of the 13 miners lost their lives in a second explosion while trying to rescue a miner who had been immobilized by an explosion that happened nearly an hour earlier. Communication problems contributed to the deaths of the 12 rescuers; the rescuers were given insufficient and faulty information about the underground conditions, and unselfishly attempted the rescue without knowing the hazards they faced.

UMWA believes that MSHA should adopt an aggressive regulatory agenda to address important issues in addition to those contained in the MINER Act, including:

1. Improved Atmospheric Monitoring Systems
2. Develop a Nationwide Emergency Communication System
3. Revise MSHA's Approval and Certification Process for Equipment Approval
4. Occupational Exposure to Coal Mine Dust (lowering exposure limits)
5. Collection of Civil Penalties (mandatory mine closures for non-payment)
6. Air Quality Chemical Substances and Respiratory Protection Standards (update personal exposure limits)
7. Surface Haulage (truck, haul road, train and loadout safety)
8. Respirable Crystalline Silica Standard (reducing quartz standard)
9. Requirements for Approval of Flame Resistant Conveyor Belts
10. Confined Spaces (tight quartered work areas)
11. Training and Retraining of Miners (revision of Part 48)
12. Surge and Storage Piles (dozer/feeder safety surface)
13. Escapeways and Refuges
14. Accident Investigation Hearing Procedures (make them public)
15. Verification of Surface Coal Mine Dust Control Plans
16. Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines
17. Modify Conferencing Process (Appeals of Citations)
18. Underground Coal Mining, Self-Contained Self-Rescuer Service Life Approval and Training.

Miners should no longer have to wait for a tragedy to strike before regulatory agencies and mine operators act responsibly. The blood of miners and the tears of widows and orphans are too high a price for adequate health and safety protections for all miners. The disregard for workers' protections demonstrated by the mining industry and the indifference of the Agency Congress created to protect them can no longer be tolerated. It is time that they are forced to take a proactive approach to protecting miners.

Congress understood prior to 1969 when it passed the Coal Act that the coal industry could not be trusted to police itself, because miners lives would never be considered the top priority by some mine operators. In 1977 Congress reviewed the conditions of miners again and determined it must create a

federal agency to enforce the law it had mandated. However, the tragic events of 2006 demonstrated that the Mine Safety and Health Administration has not fulfilled those mandates in many respects. It is time for the Agency to reestablish itself as the advocate for the coal miner. The UMWA believes that only Congressional action will ensure that happens. We cannot wait another 30 years to improve the lives of miners and their families. With the leadership of Congress and the assistance of the UMWA we are certain we will not have to.

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Thank you.

Cecil E. Roberts, President United Mine Workers of America

Cecil Edward Roberts, Jr., a sixth-generation coal miner and one of the labor movement's most stirring and sought-after orators, became president of the United Mine Workers (UMWA) of America on October 22, 1995, having served as vice president of the union since December 1982. Roberts succeeded Richard L. Trumka, who was elected secretary-treasurer of the AFL-CIO.

Growing up in a UMWA household on Cabin Creek in Kanawha County, WV, Roberts heard the stories of his family, including a great-uncle, Bill Blizzard, who was a legendary organizer during the West Virginia mine wars of the 1920's and a UMWA district president under John L. Lewis. Both of his grandfathers were killed in the mines.

After college and military service in Vietnam, Roberts worked six years at Carbon Fuels' No. 31 mine in Winifred, West Virginia, where he served as a local union officer. In 1977 he was elected vice president of UMWA District 17 by a 2-to-1 margin. In May 1981, he was reelected without opposition.

On November 9, 1982, Roberts was elected vice president of the UMWA, again by a 2-to-1 margin, running on a slate headed by Trumka and including John J. Banovic, who was elected secretary-treasurer. The Trumka - Roberts - Banovic team was reelected without opposition five years later.

In 1989, Roberts was the on-the-scene leader and day-to-day negotiator in the UMWA's militant 10-month strike against the Pittston Co., which had cut off health benefits to its retirees and was trying to walk away from its obligations to the UMWA Health and Retirement Funds. For his role in that successful strike, Roberts received the Rainbow Coalition's Martin Luther King award as well as awards from Citizen Action and the Midwest Academy.

On November 10, 1992, Roberts was reelected by an 80-percent margin to his third term as vice president.

In December, 1995, Roberts assumed the UMWA presidency upon the resignation of Richard Trumka.

In 1996, he reopened the UMWA's National Agreement for the first time in the union's history and made significant improvements in the wage agreement.

In August 1997, Roberts was elected by acclamation to the Presidency of the UMWA.

In 1998, he negotiated a new National Agreement that was ratified by the highest percentage in the Union's history. The agreement included an historic 20-year and out pension provision which has benefitted over 4,000 laid-off UMWA members to date.

In July of 2001 he became a member of the AFL-CIO Executive Council. He serves on the Civil and Human Rights Committee; Labor and the Environment Committee; Manufacturing and Industrial Committee; Safety and Occupational Health Committee; Senior Action Committee Strategic Approaches Committee; Political Education Committee; and Article XX Appeals Committee. In October of 2005, he was appointed to the Executive Committee of the AFL-CIO Executive Council.

In 2000 he was again elected by acclamation as President of the United Mine Workers of America, and in 2001 he negotiated a new National Agreement that provided a first ever 30-year and out pension provision regardless of age.

In 2004 he became the first President in the history of the United Mine Workers of America to be elected by acclamation by the membership for 3 consecutive terms.

He is on the board of the American Income Life Insurance Company.

Roberts graduated from West Virginia Technical College in 1987, and received an honorary Doctorate in Humanities from West Virginia University of Technology in 1997.

Roberts is married to the former Carolyn Stewart. They have a son, Kyle, a daughter, Melissa, two grandsons, Aaron and Brandon and two granddaughters, Savannah and Kathryn.

Committee on Education and Labor
Witness Disclosure Requirement - "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the Committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2004:		
3. Will you be representing an entity other than a government entity?	Yes X	No
4. Other than yourself, please list what entity or entities you will be representing: The United Mine Workers of America, International Union, AFL-CIO, CLC		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: International President, United Mine Workers of America. I serve as the chief officer over the activities of the Union.		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 2004, including the source and amount of each grant or contract:		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: All entities of the UMWA, including International, Regional, District and Local Unions	Yes X	No

Signature: _____ Date: _____

Please attach this sheet to your written testimony.

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