

Cecil E. Roberts, President
United Mine Workers of America
Testimony before the
House Committee on Education and the Workforce,
Subcommittee on Workforce Protections on
Modernizing Mine Safety
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Thank you for inviting me to address the House Committee on Education and the Workforce, Subcommittee on Workforce Protections about this critical issue. I am President of the United Mine Workers of America (UMWA) that has been an unwavering advocate for miners' health and safety for over 121 years. I also serve as the Chairman of the AFL-CIO Committee on Safety and Health and wish to address non-coal mining issues this morning, as well. I am pleased to have this opportunity to speak about the compelling health and safety challenges that our nation's miners continue to confront, even in this 21st century.

If we look at the history of mining in this country, one thing is clear: when Congress acts, miners' lives are saved. The numbers are stark. Shortly after 78 miners died at Farmington, West Virginia in 1968, Congress enacted the Coal Act in 1969. The legislation was then expanded to other mining industries and renamed the Mine Act in 1977. Since the Coal Act was passed, fatalities in coal mining decreased dramatically: over 300 coal miners died in 1968, the year before the Coal Act was enacted, but fewer than 100 miners perished in any single year over the last 25 years. For the 40 years immediately *before* Congress passed the Coal Act about 32,000 coal miners were killed on the job, while in the 40 years *after* it became law only 10% that number -- about 3,200 -- were killed. This was still far too many, but a significantly lower number.

For non-coal mining, the numbers are also compelling. In the 34 years immediately *before* Congress passed the Mine Act, and thereby extended MSHA protections to non-coal miners for the first time, there were 6,079 metal/non-metal miners killed on the job. In the 34 years *after* Congress passed the Mine Act in 1977, fewer than a third -- 1,881 miners -- died.

And it has been 30 years since more than 100 metal/non-metal miners were killed in a single year. In 2010, there were 23 fatalities in metal and non-metal mines.

From this information it is fair to say that both the 1969 Coal Act and the 1977 Mine Act have saved the lives of many thousands of miners. Yet, too many miners continue to get sick from their mining jobs, and too many still get killed.

From NIOSH reports, we know that well over 70,000 coal miners have died from black lung disease over the last 40 years, and over 10,000 miners died from coal workers' pneumoconiosis during this last decade, from 2000-2010.

Respiratory hazards are not just an issue in coal mines. Non-coal miners are also working among fine dust particles that require proper ventilation and controls to prevent lung disease. Substances of particular concern are diesel emissions, silica and asbestos-like fibers that are suspected to cause mesothelioma among iron ore miners.

Miners in non-coal mines are exposed to many other hazards that are similar to coal mines, as well. For example, they experience falls of material and cave-ins. Pete Marek, a silver miner working at the Lucky Friday mine in Idaho, was killed just a few weeks ago when the mine roof collapsed. Injuries for coal and metal/non-metal miners alike are commonly caused by uneven ground, a lack of guarding on machines, falls, electrical hazards and mobile equipment accidents.

I would like to address some of the important improvements that Congress made after the several multi-fatal coal-mining tragedies of 2006: Sago, Aracoma and Darby. You may recall that in January 2006 at the Sago mine in West Virginia, 12 miners died. Eleven of them perished while they waited to be rescued, huddled behind ineffective curtains in a valiant effort to try to prevent the poisonous mine atmosphere from killing them.

When the Sago disaster struck, that mine had no underground shelters to protect the miners who survived the initial explosion. This was despite the fact that the 1977 Mine Act authorized MSHA to require such protective shelters. At that time, shelters simply were not then part of the established industry practice.

Yet, in the 2006 MINER Act, Congress paved the way for shelters to be placed in underground coal mines. As a result of that law Congress passed after the 2006 disasters, coal mines finally have such shelters or shelter alternatives in place.

In fact, we have learned that despite the tremendous explosive forces that rocked the Upper Big Branch mine last April, a shelter near the explosion remained intact and *could have* sheltered miners *if* they had survived the explosion. That Strata shelter was under water for weeks, and yet it remained dry, sealed and pressurized. Had that shelter been at the Sago mine in January 2006, those 11 miners who died from the poisonous atmosphere would still be with us today. Without Congress advancing the issue in the 2006 MINER Act, we still would not have shelters underground.

Likewise, tracking and communications' technology and equipment is now far more advanced than it was before 2006. Again through the MINER Act, Congress required significant improvements. While many coal operators were then heard to say it "couldn't be done," or the costs were too high to allow them to remain in business, Congress acknowledged that these changes were appropriate and demanded that the industry implement the improvements. By legislating these changes, there was a flurry of imaginative and creative work done to develop practical equipment that could survive the harsh mine environment. These challenges are significant, but so is the value of our working miners!

We appreciate that operators are now spending more money on equipment and technology to make the mine environment safer for miners than they did before the MINER Act. However, more is needed. We need to do more to protect miners from disasters occurring in the first place, and to better protect their health in the long run.

One example where practice has not kept pace with technology concerns rock dust samples. The mine environment can become extremely explosive, and incombustible rock dust is required to minimize the explosiveness in case there is an ignition source. However, rock dust samples are not now completed in a timely fashion, even though much better equipment is available that could return immediate information.

The current protocol provides for rock dust samples to be sent to MSHA's Mount Hope lab, where the Agency uses antiquated equipment to test the samples. It generally takes 2-3 weeks for the Mount Hope lab to return the results. Indeed, at Upper Big Branch, samples taken *before* the April 5 explosion showed that the mine had inadequate rock dust – but those sample results were not reported until *after* the disaster.

There is a better system, and it is available today. NIOSH has developed the coal dust explosibility meter (cdem), a hand-held device that provides instantaneous results of the incombustible content. However, without a requirement that the cdem be used, there simply is no market for the equipment. Therefore, the cdem is not in use in this country. We are left to wonder whether having the rock dust sample results in real time would have averted the Upper Big Branch disaster.

Another way to modernize safety practices involves proximity detectors. On February 1, 2010, MSHA requested information regarding the use of proximity detection systems and whether their use would reduce the risk of accidents where mobile equipment pins, crushes, or strikes miners in underground mines and, if so, how? MSHA also requested information to determine if the Agency should consider regulatory action and, if so, what type of regulatory action would be appropriate. This should not even be debatable.

As of March 2011, the mining industry experienced 33 fatal crushing or pinning accidents since 1984 that involved the operation of remote control continuous mining machines. Although remote control continuous mining machines have the highest incidence rate, similar accidents have been recorded on other types of mining machines, as well. Miners continue to be killed by mining equipment even though we have MSHA-approved proximity devices available today. Nothing has been put into place to further prevent these types of deaths. While better and newer equipment and technology already exists, manufacturers are not manufacturing it and operators are not purchasing it, because operators are not required to use it.

The personal dust monitor (pdm) is another tool that by now has been proven, tested and approved. We know that when this device is utilized it will help reduce or even prevent further deaths from the dreaded disease of black lung. Currently miners do not use pdms. They have to wait weeks to know if they were over-exposed to breathable dust. By then it is too late to

take action to correct the problem. The pdm is a device capable of measuring dust giving real time data to miners so they can take immediate action to reduce their exposure to the harmful respirable dust that causes black lung.

The same thing goes for atmospheric monitoring behind sealed areas. Coal mines in Australia now monitor the underground coal mine atmosphere using monitoring equipment designed for areas behind seals. That equipment should be used here, too.

We are currently in the midst of an MSHA rulemaking on respirable dust exposure and how the pdm will be used, and we expect to see a proposed MSHA rule on how proximity detection equipment will be required to protect miners from preventable deaths. We hope that industry does not impose roadblocks or seek delays to prevent these two major changes from being adopted as soon as possible. History shows us that the mining industry generally resists laws and regulations that will cost more money or affect how operators produce the mining products. Operators complain that these protections are not proven, or state they are too expensive. It is our hope that today's industry recognizes the need for these changes and will join us to make these changes as soon as possible.

There is no doubt that legislation this body enacts makes a huge difference in preserving and advancing miners' health and safety. The 2006 MINER Act made critical improvements for post-accident rescue and recovery concerns. But the disaster at Upper Big Branch, as well as all the other deaths and illnesses that continue to plague the mining industry, make clear that Congress must do more to help protect miners. Operators should be required to make better efforts to prevent injuries and illnesses in the first place. After all, the mining industry has shown time and again that it is not very effective at self-policing!

In addition to needing more -- and more up-to-date -- equipment, MSHA's enforcement tools should also be modernized. For example, MSHA's criminal penalties have been so insignificant that they have not served to deter unlawful conduct. In order to allow inspectors to observe actual mining practices, Congress mandated that MSHA's periodic inspections be conducted on an unannounced, surprise basis. Therefore, it has been against the law for anyone to give advance notice of MSHA inspections. Yet, as we have learned from the Upper Big Branch investigation and the indictment the Assistant US Attorney issued against

Hughie Elbert Stover, the head of security for Performance Coal Company, Mr. Stover regularly and continually used signals to give advance notice of MSHA inspections. Miners from Upper Big Branch have also reported that they were directed to and did change their mining practices, making short-term adjustments only when they learned that government inspectors were coming to a section to inspect. If MSHA doesn't observe a violation, it won't write the citation, and with deliberate efforts to conceal unlawful mining practices, there is no question that miners' health and safety is jeopardized.

The evidence of advance notice of safety inspections is not limited to Upper Big Branch, but found in many operations. Indeed, MSHA's recent tactic of taking control of the communications' systems when inspectors travel to some operations has shown that the advance notice is not uncommon: the kind and extent of violations found when the communications are taken over exceed those MSHA had previously discovered. Clearly, the existing penalties are ineffective, and should be increased to help effect compliance.

We support MSHA's high impact inspections, which focus extra resources on rogue operators. We also support the Agency's efforts to provide education and compliance support as it has been doing, such as its updated web-based violations' reports showing each operation's violations history so any operator can quickly learn if it is vulnerable to the consequential Pattern of Violations program. However, we firmly believe that the existing enforcement provisions, specifically including the four and two mandatory inspections for underground and surface mines must remain intact.

Other areas where the Mine Act should be updated concern its whistleblower protections, and accident investigation procedures. The Mine Act was one of the first to provide anti-discrimination protections. Yet these provisions are now inferior to recent and more-protective whistleblower provisions included in other statutes. For example, the Consumer Product and Safety Improvement Act that Congress passed in 2008 provides a 180 day statute of limitations, as does the 2010 Patient Protection and Affordable Care Act. Miners under the Mine Act now have only 60 days to file a discrimination charge. This window should be lengthened to give miners a better chance to pursue actions when they suffer discrimination for exercising their health and safety rights.

The compensation provisions in Section 111 of the Mine Act should also be expanded. As it now stands, miners can collect no more than one week's worth of wages when an operator's violations compel MSHA to shut down the mine. As alternative work is all but non-existent in many coal field communities, miners need better protections. Too often miners have to make the choice between putting food on the table and protecting their own safety. By expanding the compensation provisions, miners' health and safety would be better protected.

As for accident investigations, we believe that procedures should be changed to include those most affected: the miners and family members of miners killed. Miners' representatives should be fully included in accident investigations as they have important knowledge to contribute. Yet during accident investigations, MSHA has restricted the role of designated miners' representatives. We urge that miners' representatives be given full participation rights in all aspects of an accident investigation.

We also believe that MSHA must have the power to subpoena witnesses, rather than rely on voluntary interviews. The subpoena power should encompass inspections as well as accident investigations to ensure that miners can speak freely with government investigators.

We also believe that multi-fatal accidents under MSHA's jurisdiction should be investigated in the open. The government has claimed that its on-going criminal investigation justifies its exclusion of miners' representatives and family members from its on-going Upper Big Branch investigation. Yet, the government's investigation of the BP explosion a few weeks after the Upper Big Branch disaster involved public hearings, even though a criminal investigation was also then in process.

Finally, I wish to address the scope of MSHA's jurisdiction. I know many sand and gravel operators, in particular, have lobbied to have that industry moved from the jurisdiction of MSHA to that of OSHA. The AFL-CIO Committee on Safety and Health has long opposed that. The Mine Act is more protective and more prescriptive than is the OSH Act. It has served to save miners' lives, including those in the sand and gravel industry. Indeed, of the 16 fatalities in metal and non-metal mines in 2009, five -- 31% -- were in sand and gravel mines.

Sixty-six percent of fatalities in metal and nonmetal mines in 2010 were miners with less than 5 years of experience in their jobs; for 2009 that number was at 69%. With the anticipated retirement of the baby-boom generation, many mines will be replacing a quarter to a half of their workers over the next few years. New miners in all portions of the mining industry, including sand and gravel, deserve the better protections that the Mine Act provides: they need the new miner training, the routine inspections, and coverage by safety and health standards.

Again, we thank you for the chance to appear before this Subcommittee, and appreciate your interest and concern for miners' health and safety.