



U.S. Senate Committee on Appropriations

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U.S. Senate Appropriations Labor, HHS, Education Subcommittee Testimony of Richard Stickler of the U.S. Mine Safety and Health Administration

WASHINGTON, D.C. – The U.S. Senate Appropriations Labor, Health and Human Service, Education, and Related Agencies Subcommittee on Wednesday held a hearing to assess mine safety progress one year since the deadly coal mine tragedies in West Virginia at the Sago and Alma mines. As part of that hearing, the subcommittee heard testimony from Mr. Richard Stickler, Assistant Secretary of Labor for Mine, Safety, and Health. Secretary Stickler's prepared testimony is below.

I am pleased to appear before you today to discuss the important work of the Mine Safety and Health Administration (MSHA) in protecting the health and safety of our nation's miners, and to tell you of our progress in implementing the Mine Improvement and New Emergency Response (MINER) Act of 2006.

2006 was the worst year for coal mine fatalities in over a decade. I know firsthand that every fatality is devastating for miners, their families, and the communities they live in. Let me be very clear that my number one priority is to protect the health and safety of America's miners. Both President Bush and Secretary Chao support my efforts to achieve these goals.

Everything we do at MSHA is in service of the goal of zero fatalities in the nation's mines.

The MSHA FY 2008 Budget Request

The President's 2008 Budget requests \$313 million and 2,306 full-time equivalent employees for MSHA— a 4 percent increase over the 2007 appropriation. The Budget underscores the Administration's commitment to strong enforcement of safety and health in our nation's over 14,000 mines. The Budget includes \$16.6 million to retain 170 additional coal enforcement personnel that were initially funded in a FY 2006 emergency supplemental appropriation in the wake of the Sago, Alma, and Darby mine accidents. It also supports the vigorous implementation of new safety standards and regulations authorized in the MINER Act, which the President signed into law on June 15, 2006.

Implementing the MINER Act of 2006 and Initiating New Policies

Last year, Congress passed the MINER Act - the most significant mine safety legislation in nearly 30 years. Implementing the provisions in the MINER Act is MSHA's top priority.

I would like to take this opportunity to review the progress that MSHA has made in implementing this landmark legislation.

Emergency Mine Evacuation

The Department published a final rule on Emergency Mine Evacuation in the Federal Register on December 8, 2006. This regulation implements many provisions that were mandated in the MINER Act to enhance miner safety, including:

- Increased availability and storage of breathing devices, Self-Contained Self-Rescuers (SCSRs);
- Improved emergency evacuation drills and training;
- Installation and maintenance of lifelines in underground coal mines;
- Immediate accident notification for all mines.
- Installation of fire-resistant, directional lifelines; and
- Requirement to provide multigas detectors to individual miners working alone and to each group of miners.

This rule was effective immediately, on December 8, 2006, with the exception of some training and equipment provisions that must necessarily wait for training units to be developed and made available and for the equipment to be manufactured and shipped to some of the mine operators.

With regard to the caches of SCSRs operators are required to store throughout the mines, MSHA has requested manufacturers of these units to give priority consideration to fulfilling orders to mining operations starting with those that do not have two SCSRs per miner.

I have also written letters to underground mine operators asking them to ensure that they have at least two SCSRs per miner at their mine. If they do not, I have asked them to contact the manufacturer of their SCSRs to request priority order consideration. In addition, I have asked operators to let their local MSHA District Manager know if they need priority order consideration so that MSHA can monitor the requests and assist wherever possible.

We are following a risk-based implementation plan to ensure sufficient quantities of SCSRs for every underground mine operation in this country, and we will continue to closely monitor the situation.

Emergency Response Plans

Section 2 of the MINER Act requires underground coal mine operators to adopt an emergency response plan covering the evacuation of all individuals endangered by an emergency, and to provide for the maintenance of individuals trapped underground. The first priority in any mine accident is to evacuate everyone from the mine, if possible. In addition, the emergency response plan must address post-accident communications and tracking, post-accident breathable air, lifelines, training, and local coordination.

MSHA issued Program Policy Letters providing guidance to mine operators to help them develop their emergency response plans. All plans were submitted to MSHA by the deadline of August 14, 2006. We are ensuring that the plans are reviewed in a timely manner, approved, and implemented for all underground coal mines as specified in the Act.

Post-Accident Breathable Air

With respect to post-accident breathable air, MSHA first issued a request for information (RFI) in August 2006, to solicit ideas about how to address the issue of post-accident breathable air (required by the MINER Act). The Emergency Response Plans (ERPs) must provide for emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time.

We evaluated the comments and determined the best approach for implementing this requirement is through the dissemination of a Program Information Bulletin (PIB) on Breathable Air. This PIB was placed on MSHA's website and distributed widely to the coal mining community on February 8, 2007.

The major provisions of this PIB include:

Provides the following options for Operators to meet the requirements for Breathable Air:

- Establish boreholes within 2,000 feet of the working section; or
- Provide forty-eight hours of breathable air located within 2,000 feet of the working section of the mine with contingency arrangements to drill boreholes if miners are not rescued within 48 hours; or
- Provide ninety-six hours of breathable air located within 2,000 feet of the working section; or
- Other options that provide equivalent protection based on unique conditions at a mine.

Methods of Providing Breathable Air (in barricaded or other areas that isolate miners from contaminated air) include:

- Drilling boreholes;
- Air line supplied by surface positive pressure blowers; or

- Compressed air cylinders, oxygen cylinders, or chemical oxygen generators.

We are also posting related compliance assistance materials on MSHA's website, including the Program Information Bulletin (PIB), a hazard awareness information sheet on use of compressed air and compressed oxygen; and information sheets on methods of providing breathable air, including calculations.

Post-Accident Communications and Post-Accident Tracking

In Section 2, the MINER Act requires post-accident communication and tracking systems to be in place by mid-June of 2009. MSHA is reviewing all the available technology and working with NIOSH and manufacturers to help in the development of safe, reliable systems for underground coal mines. We have had contact with more than 125 parties about systems to track and/or communicate with miners while they are underground.

To date, we have observed the testing or demonstration of 16 post-accident communications and tracking systems at various mine sites around the country. Once these systems are presented to MSHA for approval, we will expedite the approval process to ensure that workable, durable and reliable systems get into the mines as quickly as possible.

Mine Rescue Teams

The MINER Act mandates improved training, certification, availability, and composition requirements for underground coal mine rescue teams. We currently are drafting a proposed rule to implement the MINER Act provisions for mine rescue teams, and are on track for publication in the spring. The final rule will be published by the Act's deadline of December 2007.

Civil Penalties

MSHA has implemented provisions contained in the MINER Act mandating increased penalties for flagrant violations, unwarrantable failure violations, and immediate notification violations in accordance with the MINER Act. The penalty amounts currently being assessed include:

- Failure to promptly notify MSHA of accidents - \$5,000 to \$60,000
- Unwarrantable failure violations . minimum \$2,000 for the first citation and \$4,000 for subsequent orders
- Flagrant violations . up to \$220,000

Last October, I issued a Procedure Instruction Letter (PIL) to all MSHA inspectors establishing uniform, Agency-wide procedures for enforcement personnel to properly evaluate flagrant violations as defined in the MINER Act.

MSHA included the MINER Act penalty provisions and increased civil penalties for other violations in our civil penalty proposed rule, published September 8, 2006. We held public hearings to collect input from miners, the mining industry, and other interested parties.

After reviewing the hearing input and written comments from all interested parties, we drafted a final rule and submitted it to the Office of Management and Budget for their review in accordance with required regulatory procedures. We anticipate publication of the final rule on civil penalties in the Federal Register soon.

Family Liaison Program

MSHA's Family Liaison Policy has been put into place to provide for an MSHA liaison with families at the site of a mine disaster. A Program Policy Letter has been issued and 14 designated family liaison personnel have had their initial training sessions. The National Transportation Safety Board and the American Red Cross have helped train these individuals.

Sealing of Abandoned Areas in Underground Coal Mines

The MINER Act requires that standards be finalized by December 15, 2007, for the sealing of abandoned areas in underground coal mines with seals that provide for an increase in the 20 pounds per square inch (psi) standard for alternative seal construction.

Last year, MSHA raised the standard for alternative seals from 20 psi to 50 psi. This is an interim step until we establish a final standard.

MSHA and NIOSH are studying the issue, and MSHA is drafting a proposed rule that we expect to publish in the Federal Register this spring.

Technical Study Panel on Belt Air

Section 11 of the MINER Act requires the establishment of a Technical Study Panel on Belt Air. The charter governing the panel was published in the Federal Register on December 22, 2006. The first meeting of the Technical Study Panel on the utilization of belt air and the fire retardant properties of belt materials in underground coal mining took place January 9-10, 2007.

Members of the panel are prominent and experienced mine safety and health professionals. As mandated in the MINER Act, two of the panel members were appointed by the Department of Health and Human Services, two by the Department of Labor, and two members were appointed by Congress.

The panel will convene their next meeting in March in Pittsburgh.

The panel will prepare and submit a report by the end of this year to the Secretary of Labor regarding the utilization of belt air and the fire retardant properties of belt materials in underground coal mines. This report will provide independent scientific and engineering recommendations.

Refuge Alternatives

The National Institute for Occupational Safety and Health (NIOSH) will conduct research and field tests on refuge alternatives. By the end of this year, NIOSH is scheduled to report the results of the research to the Department of Labor. By mid-2008, the Department of Labor will report to Congress on the actions MSHA will take in response to the NIOSH report.

Recruitment

The Emergency Supplemental Appropriations Act of 2006 (PL109-234) provided an additional \$26 million for MSHA to strengthen its coal enforcement program, including the hiring of coal mine inspectors and other enforcement personnel. MSHA is pressing ahead with recruitment, training and deployment of the additional 170 coal mine enforcement personnel. To date, 90 of the 170 staff have already been hired. We are on target to meet our hiring deadline of September 2007, for the additional 80 coal mine enforcement personnel.

We continue to conduct recruitment drives in local communities around the country, and we have hired additional staff at our Mine Health and Safety Academy to ensure that we can properly and expeditiously train our new inspectors and get them out to the job sites where they will make a difference. I strongly believe the increased presence of MSHA enforcement staff at the job sites will have a positive impact on mine safety and health.

Reinforcing the Basics of Mine Safety and Health

We will use all of the tools available to us to achieve our goals, including tough enforcement, education and training, and technology. We will be particularly aggressive with those mine operators who habitually violate MSHA standards and who also seem to view penalties as just another cost of doing business. We are developing a database on accidents so that we can more objectively analyze trends and results. This will help MSHA target resources and attend to areas where progress has not been satisfactory.

We face the challenge of inculcating a culture of safety in an industry that has played a key role in America's economic growth since the first industrial revolution. Much progress has been made since passage of the seminal Mine Safety and Health Act of 1977. Today, every single person at MSHA remains focused on our core mission: to improve the safety and health of America's miners and to work toward the day when every miner goes home safe and healthy to family and friends, after every shift of every day.

Thank you for allowing me to testify today. I look forward to answering your questions.

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