



TESTIMONY OF

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**BEFORE THE
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

**OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

March 1, 2006

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you again to review the activities of the Federal Mine Safety and Health Administration (MSHA), the federal role in mine safety, and training and current regulatory activity. At the very outset, allow me to restate our shared support for the fundamental tenet of federal mine safety and health legislation, that is — our first priority and concern must be the safety and health of the miner.

We appear before you today to pledge to work with you and others in Congress to ensure that out of the recent tragedies will emerge a stronger resolve and greater cooperation in pursuit of safer mines. Our expectation is that from this and similar hearings and from the exhaustive official investigations now underway ... we can do better what we've tried hard to do well.

INDUSTRY SAFETY PERFORMANCE

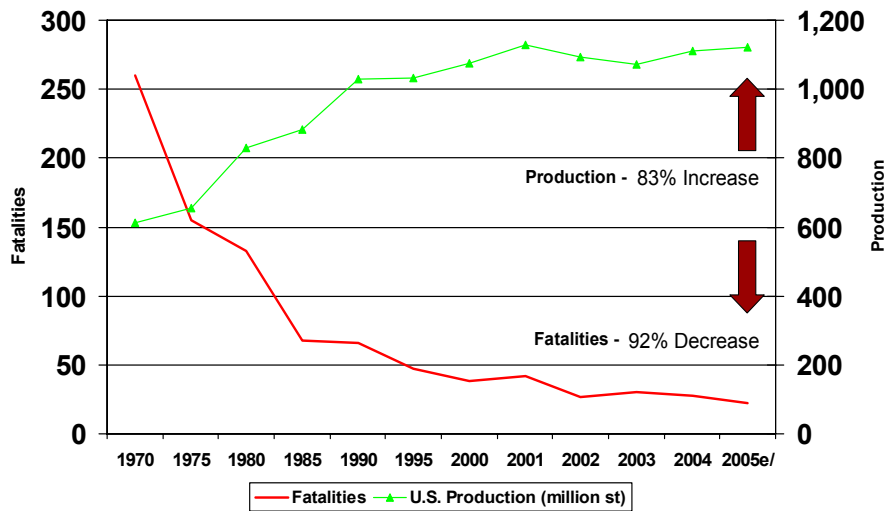
In order to consider what improvements are necessary to further advance miner safety and health, one must first review what has been achieved. Due to the tremendous commitment of all who work to provide a safe and healthy work environment for the men and women who work in our nation's mines, mining is a much safer occupation.

The mining industry has undergone a significant transformation that continues at an astounding pace. Safety and health programs have advanced and have become embedded in the mining culture. New technologies and mining methods have reduced miners' exposure to harmful conditions, and the industry continues to adopt new technologies that advance the complimentary goals of safety and productivity.

The coal mining industry takes seriously its commitment to protect its workforce. Since the first oil embargo in the early 1970s, the coal industry has been called upon to provide more coal to meet our nation's energy requirements. The industry has answered that call while providing a safer working environment for its workforce. Since 1970, coal production has

increased by 83 percent, and coal mine fatalities have decreased by 92 percent.

U.S. Coal Mine Safety and Production Trends

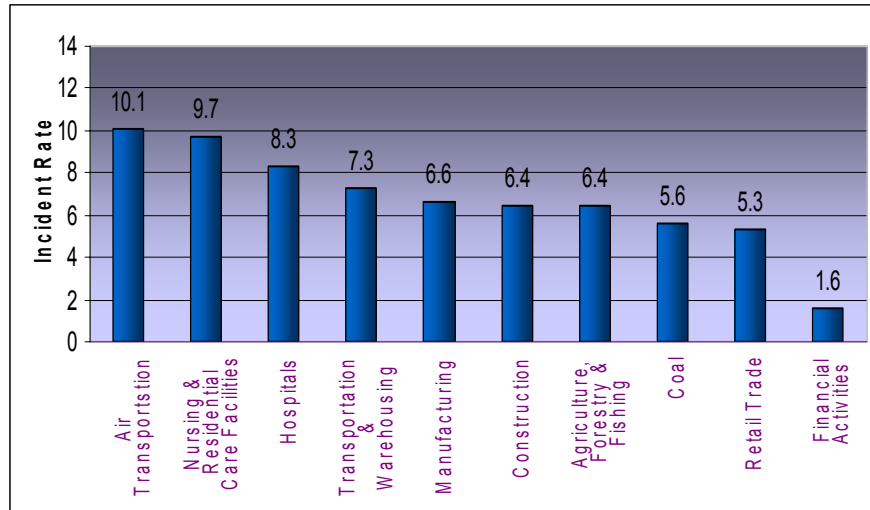


Source: Mine Safety & Health Administration (MSHA)



One need only look at 2004's safety record to recognize that the industry is moving in the right direction. Today's reportable injury incident rate of 5.6 per 100 workers gives coal mining a lower rate of occupational injuries than hospitals, manufacturing, nursing and residential care facilities among others. No longer can coal mining be stereotyped as the most hazardous job in America — a characterization often used by those unfamiliar with today's mining industry.

Incident Rates of Non-Fatal Occupational Injuries Compared to Other Industrial Categories, 2004

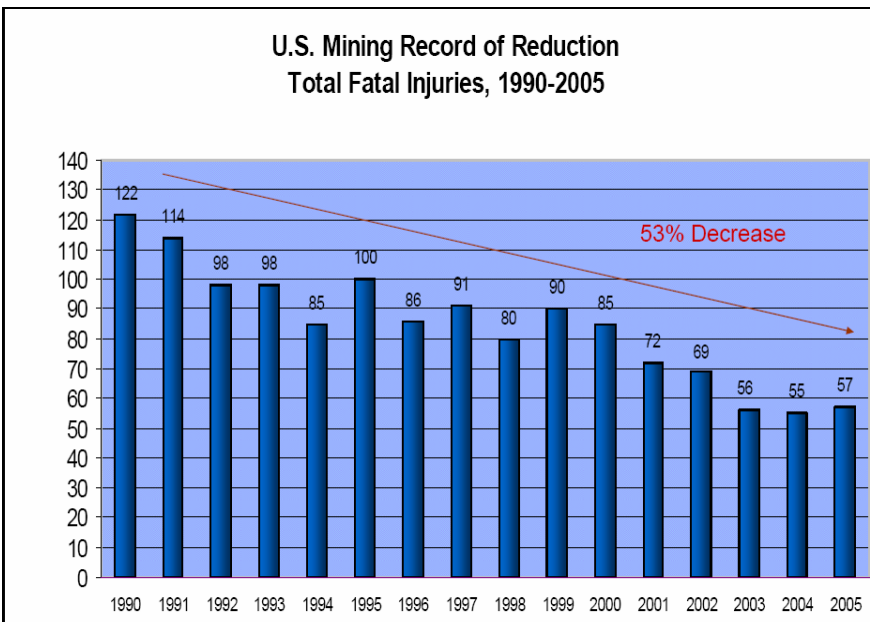


* Incident rate per 100 full-time workers
Source: Bureau of Labor Statistics



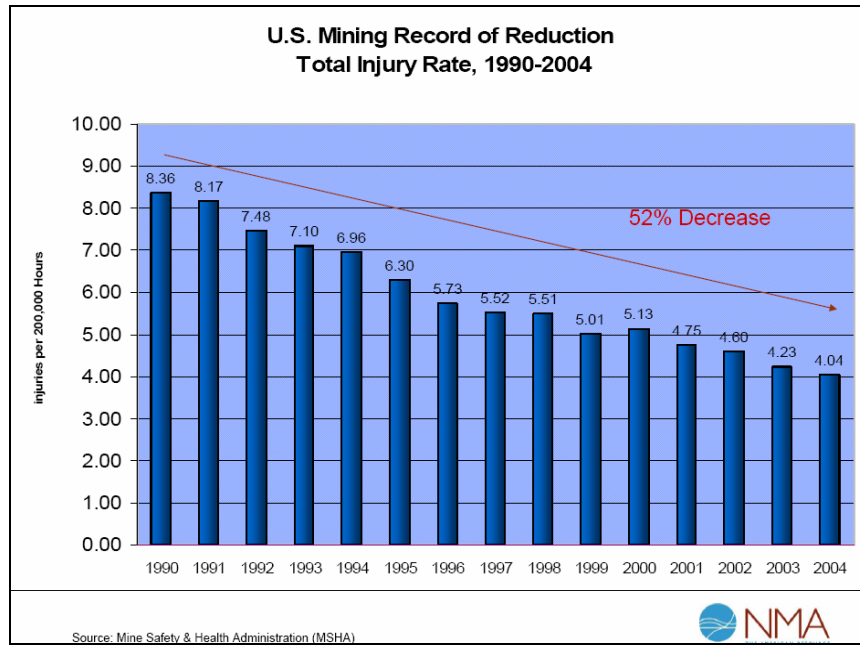
Similar dramatic reductions have been accomplished across the entire mining industry both in terms of reductions in fatal injuries as well as the industry's lost-time injury rate. During the period 1990 – 2004 fatalities declined 53 percent and injuries declined 52 percent. Again, progress with more work to be done.

U.S. Mining Record of Reduction Total Fatal Injuries, 1990-2005



Source: Mine Safety & Health Administration (MSHA)





We take pride in all of these accomplishments. Yet, the events in West Virginia again illustrate the fragile nature of these accomplishments and the need for constant vigilance to sustain them. More can, must and will be done.

Today, I'd like to discuss with you a three-fold challenge:

First, the principles we believe should guide our actions and policy makers based on our analysis of the partial information coming out of this year's tragic events;

Two, the need to focus on accident prevention in a changed and changing mining industry; and

Three, a call to modernize MSHA's enforcement procedures to more accurately mirror actual conditions in the mines, rather than an inflexible adherence to outdated procedures.

GUIDING PRINCIPLES

NMA has reviewed the publicly available information that has emerged from the events in West Virginia. In addition to the establishment of an independent commission of safety experts who will examine how technology and training procedures can be more readily adapted for use in our mines, our review has led to the development of a set of guiding principles that we offer for the Subcommittee's consideration as it looks for ways to advance mine safety and health. Those principles include:

- Expediting development and introduction of ground penetrating communication and tracking technology;
- Improving emergency notification;
- Enhancing safety training and rescue capabilities;
- Providing liability shield and indemnification for mine rescue activities;
- Ensuring new requirements are accompanied by workable transitional timeframes;
- Providing authority for mine operators to conduct mandatory substance abuse testing of all personnel at the mine; and
- Providing tax incentives to help companies invest in equipment and training needed for enhanced mine safety and rescue capabilities.

MINE SAFETY COMMISSION FORMED

In pursuit of these principles and to ensure a focused and transparent effort, NMA shortly after the first mine accident announced the formation of a Mine Safety Technology and Training Commission. The commission is drawn from safety experts in academia, labor and industry for the purpose of examining safety technologies, emergency response and rescues procedures and training regimes that could significantly enhance safety and rescue conditions in our nation's underground coal mines. The commission is being

chaired by a recognized expert in mine safety, Dr. R. Larry Grayson, chairman and professor of mining and nuclear engineering at the University of Missouri-Rolla. The Commission's first meeting will be held next Friday, March 10, and it will report its preliminary findings to the public and mine safety authorities by July 1, with a final report by the end of this year. We anticipate the commission will examine, among other items, the current and new promising technologies for mine communication, tracking miners' locations, rescue technology and methods to more readily and reliably detect potential safety hazards.

Beyond the specific guiding principles discussed above, we direct your attention to two over-riding challenges.

FOCUS ON ACCIDENT PREVENTION

Today, many coal mines present challenging geologic conditions. As mines access deeper reserves, the technological limitations of historic control methodologies are readily apparent, presenting miners, mine operators and agency personnel with new and more difficult engineering challenges. To address these challenges miners and mine operators, alike, have initiated several partnerships with the MSHA and the National Institute for Occupational Safety and Health (NIOSH) to examine new technologies to better protect miners' health. These partnerships have brought together experts to work on practical solutions to safety and health problems confronting the industry. I'm pleased to report that the industry has joined with the NIOSH, MSHA, the United Mine Workers of America, and the State of West Virginia to form a partnership on Mine Emergency Communications.

The work of these partnerships is still on-going, and our members continue to dedicate time and resources to this vital work. Our hope is lingering problems can be overcome through the development of new, mine-worthy engineering solutions. When based on sound science, this work can and will provide the basis for future rulemaking, if warranted. More

importantly, however, the partnerships also reflect a new working dynamic that has evolved in the mining industry to advance miner safety and health.

The members of this subcommittee and your colleagues on the respective appropriations subcommittee are very aware of the need to maintain a vibrant and well funded mining research program within the NIOSH. The tragic events in West Virginia underscore this need. The federal government has an important role in technology development – in order to bring safer, new devices to a relatively small market for safety equipment. We urge your support to strengthen this vital government function.

MODERNIZE OUR REGULATORY APPROACH

In addition, certain structural changes in our regulatory approach to mine safety are necessary.

Key among them is the need for MSHA to overcome institutional barriers to change, including changes that prevent the agency's management from implementing new programs. No less than a paradigm shift is required for the manner in which the agency implements its legal requirements. The agency must conduct more focused inspections and enhance the quality of inspections through continued inspector training and education.

In order to allocate its resources more effectively, we believe the agency must foster a more flexible inspection protocol while maintaining compliance with the inspection mandates of the Mine Act.

Many of our members that operate some of the safest mines in the country continue to have inspectors on-site during each and every operating shift. In regions where mines have closed, inspector presence has, without cause, increased at operating mines. The misperception persists that the Mine Act's mandate of four inspections annually for every underground mine and two inspections annually for every surface coal mine translates to only four and two visits annually. Nothing can be further from the truth. MSHA statistics show that a large underground mine can have more than 4,000 on-site inspection hours per year. This means the presence of 2-3 inspectors

each and every day the mine operates. With infinite resources, this wouldn't be a concern. But none of us have that luxury.

As a result, flexibility in inspection procedures is central to achieving the resource allocation determinations that are vital for improving the agency's safety and health programs and the industry's safety and health performance. The Voluntary Protection Program (VPP), instituted by the Occupational Safety and Health Administration, has been a remarkable success in the non-mining sector. Introduction of a VPP for the mining industry is long overdue. We must overcome traditional barriers to reach new safety and health plateaus — and VPP is an important tool to achieve this goal. Mines with safety performance that exceeds stringent, verifiable safety goals should not be inspected with the same vigor as those that fail to meet such criteria. Continuing to mandate a minimum of rigid inspections, with no correlation to performance, will not help us further reduce the incident rate.

Even with the changes that have been adopted, and the improvements that have been documented, more must be done. MSHA must redirect personnel and budgetary resources to ensuring safety improvements from mines with poor or unsatisfactory compliance records. We remain concerned that failure to implement, or delays in implementing required changes, may thwart the positive safety and health advances that are attained when the agency can allocate resources based upon need, rather than on historic geographic or political considerations.

THE WEST VIRGINIA EXPERIENCE

Mr. Chairman much attention has been focused on the response the expediency with which the West Virginia legislature passed legislation to address the actual and perceived shortcomings of safety practices. Following passage of that legislation emergency rules were promulgated that became the subject of discussion and debate. This week revised emergency rules are being issued that are significantly different than those initially published. Why is that? We would submit that once the expertise of industry, labor and

all relevant government officials were utilized, a better solution was achieved without losing sight of the general precepts of the initial legislation. Mr. Chairman, we would hope that the Congress will learn from that experience. We believe that the best way to improve mine safety is to pool the collective efforts of industry, labor and government to solve problems, without agendas.

SUMMARY

Today the mining industry and its dedicated mine safety and health professionals face challenges far different from those anticipated when the Mine Act was adopted. Difficult geological conditions, faster mining cycles and changes in the way work is conducted introduce potential complications that require the introduction of new and innovative responses.

As we look to the future, we recognize that our ability to further advance coal mine safety and health will require an examination of the structural and technologic hurdles that must be overcome. It will require a commitment to identify and foster the development of 21st century technology that will perform effectively and reliably in the mining environment. Technologies such as the introduction of remote control miners, integrated methane monitors on mining equipment, atmospheric monitoring systems, and longwall mining systems are a few of the advances that have contributed to the industry's improved safety record. Advances in technology have been integral to our safety improvements thus far and will, we believe, contribute to further improvements in mine safety.

Further improvement will require us to identify potentially dangerous conditions before they put miners' safety or health in jeopardy as well as the appropriate methods to minimize, to the degree possible, the onset of dangerous conditions and practices.

Simply put, improved safety performance demands that both government and industry redirect resources toward the prevention of

accidents, injuries and illnesses and away from business-as-usual policies that inevitably lead to unnecessary and unproductive confrontation.

Mr. Chairman we look forward to working with you and your colleagues as the Congress considers legislation. Working together, we will develop programs to train and educate a new generation of employees so that they can have a safe and productive career in an industry vital to this country's energy markets and national interests.

Thank you.