



TESTIMONY OF

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ON BEHALF OF

NATIONAL MINING ASSOCIATION

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INTRODUCTION

Mr. Chairman, members of the Committee good morning, I am Michael Peelish, Senior Vice President, Safety and Human Resources for Foundation Coal Corporation and I am testifying on behalf of the National Mining Association. Let me begin by thanking you for this opportunity to have a conversation with you about miners' safety and health.

Congress declared in the 1977 Mine Act that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource – the miner." The mining industry has tried to live these words through its deeds and has taken on the challenges to protect its miners through both improved technological systems and worker safety behavioral changes and has successfully reduced the number of fatal injuries and the incidence rate for injuries dramatically since that time. But we will never be satisfied until every miner returns home safely at the end of each shift.

Thus we should discuss our successes while recognizing there is much more to be accomplished. I am convinced the mining industry has not received the just credit for its safety success from the Congress, the American people, or the agencies that are charged with the responsibility of enforcing the Mine Act. As any good business should do, we must assess the "As-Is" state of the industry, what is the desired "Future State", and what is the process for obtaining the Future State. The Future State of mining, as it should be for any industry, is to seek Zero injuries and Zero incidences of health related illnesses. Now, the question presented is how do we achieve Zero?

INDUSTRY SAFETY PERFORMANCE

The “As-Is” state of mine safety shows dramatic improvement since 1970. I know this Committee has seen the MSHA published data which shows the dramatic improvements made in safety. To summarize, from 1970 to 2005, fatal injuries have decreased by approximately 92% in the coal industry and by approximately 75% in the metal/nonmetal industry. Please listen to me when I say these are too many, but there has been significant improvement. In 1978 the coal incidence rate for all injuries was 10.05 and the metal/nonmetal incidence rate for all injuries was 7.95. In 2004, the incidence rate reduced by over 50% to 5.0 for coal mining and 3.55 for metal/nonmetal mining. This is also clearly a dramatic improvement, and an incidence rate far superior to many other industries, but not at the level we in the mining industry consider satisfactory.

These MSHA statistics show improvement while both coal and metal/nonmetal industries have achieved record production. How has the mining industry achieved this performance? I would submit these improvements have been achieved through industry initiated mining techniques and technologies and a change in culture whereby mine operators truly believe that safe mines are more productive mines.

In the 1970s, roof and rib accidents were a common cause of serious and fatal accidents in underground mining. Improvements in mining techniques, such as longwall mining in underground coal mines and the use of automated roof drills in hardrock mining have helped mine operators reduce dramatically this most unforgiving type of accident. In surface coal and metal/nonmetal mines,

better design and layout of haul roads and high wall management has achieved similar improvements in mine safety. Mine operators and equipment manufacturers have introduced other mining technologies such as remote controlled and automated equipment, roof bolting support systems, rollover protected operator cabs, and atmospheric monitoring systems in both industries. And in coal mines, improved ventilation systems were introduced by mine operators through the use of ventilation boreholes and bleeders shafts for safer gob ventilation and the list goes on.

I have so far commented on technical improvements and these are clearly important. But perhaps, the most important element in improving safety is the relentless focus on “safety culture”. My current and former employers all practice what they preach by providing training well beyond what is required by the MSHA training standards. In Foundation Coal, safety culture starts in the board room and at the senior management level and cascades down to the mining operations. Safety performance is discussed at every board meeting, every senior management meeting, and most important at every shift at the mines. This focus has been no different since I entered this industry as a mining engineering student in 1979. The message in this industry is clear, safe mines are productive mines. Said another way, do it right the first time every time has been “preached and practiced” by my employers throughout my career. This brings me to the current legislative proposals aimed at improving safety.

CURRENT LEGISLATIVE SAFETY PROPOSALS

The recent spate of state and federal legislative efforts must not be pursued in a manner so as to miss an opportunity to do what is right. As Senator Byrd stated at the time of the January 23, 2006 hearings before the Subcommittee on Labor, Health and Human Services, Education and Related Agencies of the Senate Committee on Appropriations, “politics must never play a role in the enforcement of safety and health regulations.” The mining industry could not agree more, but the mining industry fears the politics of safety will play a role if a rational approach is not utilized to assess and implement best practices. To do otherwise may result in the implementation of approaches and technology which are not the most effective or reliable. In this regard, I want to address some of the proposed legislative mandates that have recently appeared in this Congress.

First let us look at Communications and Tracking Technologies

The industry members are supportive of improved mine communications. My company’s most senior engineer with extensive experience in German and other international coal mines as well, had traveled to South Africa several months before the Sago mine tragedy to assess available technology. A completely fail-safe communications and tracking technology, however, does not exist and did not exist at the time of the recent mine disasters, notwithstanding what this Congress was told during January 23, 2006 hearings. To my knowledge, an affiliate of Foundation Coal installed one of the first PED systems in the US coal mining industry in Utah. This system worked to notify miners of a

mine fire in 1998. This system allowed a simple text message to be sent to the miners advising them to evacuate the mine. This early warning allowed miners to evacuate the mine immediately without injury. For this we are grateful. However, it is important that you understand the limitations of this system. First, the text message could only be communicated one way. Second, the system had shadows whereby miners were not always able to receive messages. Third, the system relied on an in-mine antenna to function. In fact, the system was lost within a matter of minutes after the original text message had been sent due to the mine fire destroying the underground circuit. After that incident, testing was done to see if an indestructible surface circuit could be installed and provide the same level of coverage. No system could be found that was capable of achieving this goal.

Can improvements in communication be achieved? Emphatically the answer is yes. My concern is not that additional communication requirements will be mandated, nor is it the cost of communication systems. My hope is that realistic expectations of what is technologically achievable drive whatever requirements become either law or “Best Practice” in the industry. Also, the mining industry does not object to the use of tracking systems although tracking systems that approach the level of coverage expressed to this Congress during the January 23, 2006 testimony clearly do not exist. Let us approach this issue through sound science and not idle promises of equipment vendors and others who want to sell a product or state as fact that which is only a comment or opinion.

Next I would like to address Adequate Supplies of Air

The industry promotes technology or ideas that provide “adequate supplies of air”. How that objective is achieved may vary depending on individual mine conditions. Let us not forget however that the first and foremost principle in this industry, a view shared by agencies and mine workers alike, is to evacuate and not to barricade. Barricading is an absolute last resort. The ability of a last resort chamber to withstand a secondary explosion or fire is at best problematic. Our company, without an agency mandate, installed last resort chambers in 2 western coal mines with exceptionally long escape distances. I am aware that another company with which we were formerly affiliated installed similar chambers in an underground molybdenum mine in the west with multiple mining levels and shafts. These are workable solutions and can provide a “secondary” means of safety. I say secondary means of safety because again the first principle is to evacuate.

The 1969 Coal Act and the 1977 Mine Act recognized this principle by requiring two distinct escapeways from the mining section to the surface. It is not sound safety practice to encourage a false sense of security. In fact, when last resort chambers were inserted into the Mine Act, the mine rescue experts of that time period urged the Agency to emphasize escape and not barricading in its training. We have all followed this prescription for good reason – it is the right thing to do. I realize the recent experience in Canada with the potash mine fire may encourage legislators to revise the principle so as to barricade first, but potash does not burn.

Further, the industry does not oppose additional self rescuers for escapeway systems that require a longer time to travel through to safety. The industry is continuing to work hard to find a workable solution to these issues. Our request is that if a standard is put forth that it be performance based allowing for flexibility to meet the standard.

There have also been proposals for revamping Mine Rescue Teams

Mr. Chairman, the mine rescue system is not broken, but it can be improved with the right leadership. At both of the mine incidents in January 2006, mine rescue teams answered the call and for this we are all grateful. Changing the law unfortunately would not have changed the outcomes. Rather than mandate teams at every mine, Congress and the states should find ways to encourage mine operators to form teams of miners who want to be involved in mine rescue or emergency service. The industry's fear is that passing unrealistic mandates will create mine rescue teams on paper only but will not create mine rescue teams that have the desire to do what they are asked at the time of a mine emergency. Furthermore, quickly formed and inadequately trained mine rescue teams will discourage the willingness of well-trained teams to put their teams at risk when the time comes to help a neighbor in need.

Mine rescue team members are very special people. They do not participate in mine rescue for either the money or the glory. They do it because they have the desire to help others in need. We can improve the mine rescue system and the industry has looked at this issue many times over the past decade. In the 1990s and again in 2002, summits on mine rescue were

convened by MSHA, and ideas were discussed and plans were developed by mine rescue experts, industry, labor and MSHA. For whatever reasons, MSHA has not taken what the industry, labor, and agency experts have put forth and caused positive change to occur. Congress should allow these experts to again wipe off the dust from the work that has been shelved and provide the mine rescue experts the confidence that what is developed will be acted upon with all deliberate speed. I do not come before you with the answer, but I do know that well intentioned rules that are developed without the input of the mine emergency experts would be a mistake. I know that these experts can develop a solution. They showed at these summits that they are willing to develop solutions. All they ask is for their ideas to be followed-up with action. Let us consider a few additional points about mine emergencies.

Let us not be fooled that safety will be improved by assuming the answer is more mine rescue teams created through a legislative mandate. Individuals who understand mine emergencies know that mine rescue teams are the last line of defense. The industry looks at mine emergency preparedness in a much broader proactive sense focused on improving prevention, detection and first response. This Congress can provide the leadership for mine operators to engage in the first two levels of mine emergency preparedness so as to avoid the need for mine rescue and recovery. After prevention and detection, the first level of mine emergency preparedness is fire fighting training. This involves trained fire-fighting personnel capable of responding in the first critical minutes of an emergency and the availability of fire fighting equipment. The second level of

mine emergency preparedness involves more highly trained fire fighting personnel who have undergone more intense training and have additional fire fighting apparatus. The next level involves the mine rescue and recovery teams as we now know them.

The mining industry has not been afraid to spend money for mine emergency safety if it is to serve a good purpose. Case in point is that my company formed the first mine rescue team at Riverton Coal Production in the coal industry in 15 years in 2001. It did so at the time when the coal market did not support such costly expenditures. It formed a mine rescue team not because of a legislative mandate, but because strong senior and operational leadership believed it was the right decision.

Congress can also assist in the formation of mine rescue teams by providing that mine rescue personnel or operators will not be liable for civil damages for acts or omissions resulting from providing such rescue work unless such acts or omissions are the result of gross or willful misconduct.

The West Virginia Experience

This industry knows the speed with which the West Virginia legislature passed legislation to address the actual and perceived shortcomings of safety practices. Since that legislation was introduced, several versions of an emergency rule have been issued, reissued, and are currently being finalized. These revised emergency rules are significantly different than the initial legislation. Why do you suppose that is? I would submit that once the industry, labor, and competent government expertise were allowed to have a seat at the

table, a better solution was achieved without losing sight of the general precepts of the initial legislation. Mr. Chairman, this Committee should learn from that experience.

I have heard that some Senators believe we must do something quickly with mining legislation because “perfect is the enemy of good”. I would submit to this Committee that legislation without the support of science and facts is exactly what we must not do. This Committee and the American public and press should not rush to a judgment of this industry especially in light of the vast improvements the mining industry has made over the past several decades and its superior incidence rate over other industries. We achieve more as a total mining industry to solve a problem, without agendas, when we pool our collective efforts of industry, labor and government representatives.

GUIDING PRINCIPLES

Mr. Chairman, before I move into Recommendations for Reform, I would like to share with this Committee the work of the mining industry CEOs whose collective experience will be invaluable to Congress as it discusses mine safety legislation. The CEOs have shown strong leadership by establishing an independent commission of safety experts who will examine how technology and training procedures can be more readily adapted for use in our mines. I am pleased to say that Mr. Cecil Roberts has agreed to be a member of that Commission. Those principles include:

- Expediting development and introduction of ground penetrating communication and tracking technology;

- Improved emergency notification;
- Enhancing safety training and rescue capabilities;
- Providing liability shield and indemnification for mine rescue activities;
- Ensuring new requirements are accompanied by a 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.

Now, I would like to address several areas in need of reform if we are to achieve Zero.

It is time to reevaluate the current regulatory and enforcement program and stop elevating form over substance. The resources of both government and industry must be redirected toward the prevention of accidents, injuries and illnesses and away from issuance of insignificant violations to meet a quota. Decisions must be based upon sound science and recognition of the industry's commitment to further improving miner safety and health. The mining industry believes certain fundamental reforms must be implemented for continued improvements to miner safety and health:

- first, MSHA must base resource allocation decisions on documented need, rather than unexamined conformity with the directives contained in the Mine Act;

- second, inspections must be more focused and the quality of inspections must be enhanced through better inspector training and education;
- third, rulemaking and policy decisions must be achievable, authorized by and in compliance with the law and developed on the basis of sound science and the furthering of miner safety and health rather than ease of enforcement; and
- lastly, a more cooperative, even-handed, and constructive climate must be fostered between MSHA and its various constituencies.

Inspections Activity & Resource Allocation Decisions

Mr. Chairman, MSHA resource allocation decisions, inspector utilization determinations and the time allocated to individual facility inspections must be adjusted based on industry segment and site specific accident rates. MSHA should establish a mechanism to provide incentives to reduce the number and scope of inspections on the basis of performance and the adoption of voluntary performance programs. As you know, under the Mine Act, MSHA is required to inspect every underground mine four times per year and every surface mine twice per year, but the agency also conducts thousands of what it calls “spot” inspections aimed at measuring compliance with standards governing specific conditions or practices. Contrary to Congressional expectations, the two surface mine inspections and four underground mine inspections do not consist of semi-annual or quarterly visits of a few days’ duration. Rather, they can generally mean a continual presence at the mine throughout the year. MSHA’s statistics show that a large underground coal mine can have as many as 4,000+ on-site

inspection hours a year. You must recognize that this level of inspection presence means there are 2-3 inspectors at many mines every weekday.

If Congress wants MSHA to have a bigger impact on improving safety, then let us make more efficient use of its resources. Said another way, we need to align inspections with the first priority of the Mine Act – protect the miner. More often than not, a mine inspector is not able to cite the incidence rate of a mine, but they are able to cite the number of citations that have been issued to that mine. Is this really what the framers of the Mine Act wanted?

Mr. Chairman, now let us really think out of the box. Let us make MSHA inspectors share the responsibility of the incidence rate at a mining operation. Let MSHA inspectors be judged on a mine's incidence rate rather than its citation per inspector day rate. This novel approach might cause MSHA to focus on what accounts for 90+% of the accidents and injuries to miners – unsafe behaviors, not unsafe conditions. The industry is not abdicating its responsibility and we would never suggest such an idea. However, if we joined the forces of the mine operator and MSHA, the right behavioral change to achieve improved safety and health would be the outcome and the ability to breakthrough to Zero becomes more of a reality.

We believe it would be appropriate for MSHA to establish a mechanism to provide incentives to reduce the number and scope of inspections based on performance and the adoption of verified and objectively administered voluntary performance programs. Mines whose safety performance exceeds agreed upon industry averages need not receive the same degree of inspection attention as

those that fail to meet such criteria. My former employer operated a copper smelter facility which applied for Voluntary Protection Program (VPP) Five Star recognition. I had the opportunity to view this process and was impressed with the rigor required before such a determination could be granted. It is a process that is successful and actually places greater responsibility on the operator to perform.

OSHA, by virtue of its expansive jurisdiction, has had to target its enforcement resources in order to address those worksites and those conditions that need the most attention. MSHA should consider adopting similar targeted compliance programs which recognize those whose performance is exemplary and permit focused attention toward those whose performance does not meet well-defined criteria. Continuing to mandate a minimum number of rigid inspections, with no consideration of performance, will not move the incidence rate below the current static plateau.

Of equal importance is that MSHA inspectors be trained and qualified to inspect the type of facilities to which they are assigned. The changing nature of mining and the enhancement processes used by certain segments, for example autoclaves and roasters, mandates that those charged with the responsibility of assessing compliance with the law and implementing regulations be thoroughly familiar with the processes employed. Underground coal mining is not the same as underground metal/nonmetal mining. Regrettably this is what MSHA should consider developing minimum professional development standards for individuals at all levels within the organization.

CONCLUSION

Today, mine safety and health professionals face challenges far different from those anticipated when the Mine Act was enacted. Today's challenge is to analyze why accidents are occurring at a mine, then use that analysis as a basis for designing programs or techniques to manage the accident promoting condition or cause. Where existing technology is not sufficient, mine operators must be afforded the flexibility to use all existing, non-traditional means to protect miners.

Mr. Chairman, once again, on behalf of the members of the National Mining Association, thank you for the opportunity to give our perspective on this vital public policy matter. If you or the other members of the Committee require additional information, we stand ready to provide it.