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**STATEMENT BY SENATOR KENNEDY ON MINE SAFETY OVERSIGHT  
(AS PREPARED FOR DELIVERY BEFORE HELP COMMITTEE)**

We must do everything in our power to see that not a single life is lost in mining because of ineffective enforcement, outdated technology, or inadequate safety standards. Twenty-four miners have already died this year, 21 of them in coal mines, just one short of the total number of coal mine deaths for all of last year. Today we must ask where we've gone wrong.

Last month Senator Enzi, Senator Isakson, Senator Rockefeller and I went to Buckhannon, West Virginia, and met with the family members of the men who died in the tragic explosion at the Sago Mine. It was one of the most moving visits I have had in my time in the Senate. Each of us left West Virginia committed to improving safety and health conditions in the nation's mines.

We promised the families at Sago that we would strengthen safety protections, so that tragedies like this would never happen again and we have introduced legislation to establish stricter safety standards.

But new laws are only part of the battle. We need adequate regulations and resources to enforce the law and to develop new safety technologies. Legislation is nothing if undermined by weak regulations or lax enforcement.

That's where today's hearing comes in. We need to understand whether the Mine Safety and Health Administration -- the agency charged with protecting America's miners -- is fulfilling its mandate.

There are real questions about whether this obligation is being met. The President has consistently sought to reduce the budget for enforcement. Budget cuts have resulted in a loss of nearly two hundred positions during the first five years of this Administration. The Administration has also repeatedly underfunded the National Institute for Occupational Safety and Health. It's seeking cuts again this year of \$5 million.

MSHA has been reluctant to issue serious penalties. The Sago Mine operator had over 200 safety citations last year, nearly half of which were "serious and substantial" enough to potentially lead to injuries. Eighteen resulted in partial closures of the mine.

Incredibly, the average fine for a violation was only \$156, and 89 citations received only the minimum fine of \$60. With fines that low, companies have little incentive to make safety improvements.

I understand that the Agency is reconsidering its 25-year old penalty structure. The Administration has proposed raising the maximum fine from \$60,000 to \$220,000. But we must remember that such gestures are meaningless unless MSHA actually issues those fines.

In fact, MSHA rarely uses the current maximum fine of \$60,000. Since 2001, it has issued only 37 fines at the maximum level. By comparison, during the same five-year period at the end of the Clinton Administration, MSHA issued 118 fines at the maximum level, over three-times as many.

Even fines that are issued are notoriously subject to reductions. The explosion at the Jim Walter Resources mine in Alabama in 2001 killed 13 miners. MSHA originally issued a penalty of \$435,000, but an administrative law judge at the Mine Safety Review Commission reduced it to \$3,000 -- a \$3,000 penalty, in a case in which 13 miners were killed.

The Agency is appealing this decision, but it demonstrates another impediment to the assessment of tough fines for serious safety violations.

Enforcement also goes beyond monetary fines. The law permits MSHA to shut down mines where there has been a “pattern of violations.” There may be no stronger penalty than stopping a mine’s production, but MSHA rarely uses this enforcement tool. It apparently saw no pattern in the 200 violations at the Sago Mine in 2005. It’s time the Agency did more about chronic and persistent violations, including closing dangerous mines before tragedies like those at Sago and Alma can occur.

Our nation’s miners also deserve regulations that require the most up-to-date safety technology, instead of requiring miners to rely on oxygen units and communications equipment that are thirty years old. Rescue teams should be trained and available, so that fires and other hazards are dealt with as quickly as possible.

MSHA has known about these problems for years. But the Administration had other priorities. It eliminated 17 projects to improve mine safety from its regulatory agenda, and that laissez-faire attitude has led to tragic results.

A poignant example is MSHA’s recent announcement that it plans to issue an emergency rule providing extra stores of oxygen for miners. In 2001, it rejected a proposal that would have done just that. David Lauriski, who led MSHA when it rejected the proposal, was recently quoted as saying, “In retrospect, maybe we ought to have had requirements for more caches.” But that kind of hindsight is little comfort to the families of miners who have died this year.

Other safety initiatives that the Agency rejected would have addressed escape ways and refuges, conveyor belt flammability, and mine rescue teams—all issues that go to the heart of the accidents at the Sago and Alma mines. At the very time MSHA was abandoning measures to improve mine safety, it adopted a rule approving ventilation plans that allow noxious and volatile air from conveyor belts.

It also proposed a five-year delay on a rule to reduce the cancer-causing diesel fumes that miners breathe.

MSHA is belatedly collecting information on new technologies. Obviously we need regulations requiring up-to-date safety technology in every mine in the United States. Other nations do it, and so can we. Miners in Canada are required to have 36 hours of breathable air, but miners in the U.S. are required to have only one.

Over half of all Americans rely on coal to provide their electricity. Mining is an essential industry, and our miners and their families deserve the safest possible conditions. We’ve all had a loud wake-up call in recent weeks and it’s time to act, before any more lives are needlessly lost.

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