

STATEMENT OF
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BEFORE THE

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

UNITED STATES SENATE

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Chairman Harkin, Ranking Member Enzi, and Members of the Committee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) to update you -- nearly one year later -- about the ongoing investigation into the April 5, 2010 explosion at the Upper Big Branch (UBB) mine in West Virginia that needlessly took the lives of 29 miners, and to report on the actions that we have taken since the explosion. The accident at UBB was the worst mining disaster since the creation of MSHA by the Federal Coal Mine Health and Safety Act of 1969 (Mine Act) and the deadliest coal mine disaster this nation has experienced in 40 years. As a result of the explosion, the need to rethink how we approach mine safety and health to protect miners has taken on a new urgency.

I also want to discuss why, despite MSHA's extraordinary efforts in the wake of the UBB disaster, legislation is still needed to fully protect our nation's miners. The safety and health of those who work in the mines in this country is of great concern to President Obama, Secretary of Labor Hilda Solis and me. The Secretary has articulated a forward-looking vision of assuring "good jobs" for every worker in the United States, which includes safe and healthy workplaces, particularly in high-risk industries, and a voice in the workplace. At MSHA, we are guided by that vision.

I arrived at MSHA over a year ago with a clear purpose -- to implement and enforce the nation's mine safety laws and improve health and safety conditions in the nation's mines so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift. We owe it to the memory of the 29 miners who died at Upper Big Branch and to the families that they left behind to rededicate ourselves to protecting today's miners.

Having been involved in mining since the age of 18, I have a deep respect for those who choose mining as a career. I have spent most of my life with miners, mine operators and mine safety professionals. I think we can all agree that mining is critically important to our economy, and I believe most understand our collective responsibility to ensure that effective health and safety standards are in place and are followed to prevent injury, illnesses and death.

I know that it is possible for a mine to be a safe place to work for miners and a profitable business for operators. Most of the industry shares this belief and makes the commitment to safety because it is not only the right thing to do, but the smart thing to do as well. Injuries, illnesses, and fatalities have for too long taken a toll on miners, their families, their communities and the mining industry.

We also understand that MSHA's effective enforcement of the law should create a level playing field, so that operators who play by the rules and provide safe mine conditions do not have to compete against operators who cut corners on safety.

While enforcement is the major tool at our disposal to secure compliance with the Mine Act and health and safety standards, MSHA will continue to partner with the industry to ensure that miners are safe and healthy and that the industry and those who derive their livelihood from the industry – especially those who play by the rules – continue to thrive.

Upper Big Branch Investigation

Since I last testified before this Committee in April 2010, MSHA has made significant progress in its investigation of the explosion. I would like to first provide a brief overview of the investigation and then give you an update on what we have learned so far.

The investigation team was named just after the explosion, but there was a delay in getting the team members underground due to unstable conditions and the need to provide a safe working environment for the investigators. The investigative team began its physical inspection at the end of June 2010. The underground investigation – which has been extensive – is nearing completion. MSHA has conducted more than 260 witness interviews and has dedicated 108 enforcement personnel to the investigation. This includes 10 mine dust survey teams, 7 mapping teams, 3 electrical teams, 1 ventilation team, 1 geology team, 1 flames and forces team, 1 evidence collection team, and 1 inspection activities team. In addition, 45 technical support personnel are performing testing and other technical activities related to the investigation. Our investigative teams have combed through every inch of the accessible parts of the mine. To date, more than 2,000 pieces of evidence have been collected and tested, including equipment, and gas, dust and other samples. While there still is more work to be done, MSHA is committed to completing the investigation in as timely a manner as possible.

I want to note for the Committee that while MSHA is investigating the cause of the accident and how to prevent future, similar accidents, the Department of Justice (DOJ) also opened its own investigation into possible criminal wrongdoing almost immediately after the explosion. The United States Attorney for the Southern District of West Virginia requested that MSHA delay its announced public hearings and the release of witness transcripts so as not to jeopardize the separate criminal inquiry by DOJ. MSHA has honored that request in recognition of the President's instruction for the Department of Labor to work with DOJ to ensure that every tool in the federal government is available in the investigation of the accident. That criminal investigation is ongoing and, on March 1, the U.S. Attorney issued the first indictment related to the disaster. He indicted the head of Security at Performance Coal, a Massey subsidiary, for obstructing justice and making false statements about his role in giving advance notice of underground inspections at the mine. We will continue to support DOJ as they work to bring those who violated the law to justice.

Since the outset, MSHA has been conducting one of the most transparent accident investigations in the history of the Agency. The investigation is long and complex and, we have been releasing information as soon as we are able, including in response to numerous requests under the Freedom of Information Act (FOIA). It is important, however, that we give the investigation team the ability to collect and analyze data and other evidence before we disseminate the information to the public. Within this framework, we have established an "Upper Big Branch Single Source Page" on our website at:

<http://www.msha.gov/PerformanceCoal/PerformanceCoal.asp> to post as much information as we can to keep the public informed about the accident. We are continually reviewing our disclosures and pending requests for information to determine what additional information we can release and post to our website. As with past investigations, MSHA cannot prematurely release information or documents vital to the investigation.

In addition, we have honored our commitment to the families to keep them as informed as we can about the findings of the accident investigation team to date. It is critical to them that the team conducts a thorough investigation and determines what caused the deaths of their loved ones. To the extent that we have been able to release information, my colleagues and I have met with the families of the victims on a number of occasions to bring them up to date on the status of the investigation. The last family briefing was on January 18, 2011, when we met with the families for almost four hours. The Solicitor of Labor, M. Patricia Smith, joined us at this briefing. In addition, consistent with Section 7 of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act), MSHA family liaisons are in continuous contact with the families.

To continue to be as transparent as possible, MSHA will hold a briefing on June 29, 2011, to share with the public information gathered during the investigation of the explosion at the Upper Big Branch mine in Raleigh County, W. Va. The briefing coincides with the one year anniversary of the start of the underground investigation at the Upper Big Branch Mine and will be held at MSHA's Health and Safety Mine Academy in Beckley W. Va. Although the underground investigation and interviews are still ongoing, by June, MSHA investigators will be able to compile additional relevant evidence in order to provide a substantive presentation to the public.

We know that for the families the past year has been incredibly difficult and that the investigation is taking more time to finish than we had originally thought. The families have been very much in our hearts and prayers as we work to conclude this complex investigation as quickly as possible.

We also have held regular briefings for the Committee leadership and your staff on the status of the investigation and our preliminary findings.

When I testified last April, the investigation team had just been selected, and there was little I could tell you about what caused the explosion at Upper Big Branch. In the intervening months, we have learned a tremendous amount. Based on the evidence that the team has gathered to date, it appears that a low volume of methane and/or methane fuel from natural gas provided the fuel for the initial ignition on or near the face of the tailgate side of the longwall shearer, or cutting machine. Small methane ignitions are not uncommon in coal mines, but when proper safety measures are followed, these ignitions are generally controlled or extinguished by proper ventilation and safety equipment on the longwall shearer, such as mining bits and water sprayers.

The evidence to date shows, however, that at Upper Big Branch, the small ignition was not contained or quickly extinguished. The analysis also indicates that a small methane ignition transitioned into a massive explosion, fueled by an accumulation of coal dust that propagated the blast.

While the investigation is not complete, and it is likely to be several months before MSHA is able to issue a report, we do know already that explosions in mines are preventable. Most importantly, we know that a workplace culture that puts health and safety first will save lives and prevent tragedy.

MSHA's Actions after Upper Big Branch

The tragic events of April 5th at the Upper Big Branch mine changed the lives of many people – the miners' families, their communities, miners around the country, and those of us at the Department of Labor dedicated to mine safety. When the Secretary and I sat with the families on

those fateful days following the explosion, waiting for news of their loved ones, we committed to them that MSHA would act boldly to prevent another similar disaster. President Obama reiterated that promise when shortly after the accident he told the nation that “we owe [those who perished in the UBB disaster] more than prayers. We owe them action. We owe them accountability.”

The MSHA team has pulled together and worked hard to make good on the President’s promise. We are using every tool at our disposal, including ramped-up enforcement, targeted upgrades in our regulations, and education and outreach.

One of our most effective enforcement tools has been our impact inspections. After the disaster at the Upper Big Branch mine, MSHA began to conduct strategic “impact” inspections at coal and metal and nonmetal mines that needed greater attention. From April 2010 through February 2011, MSHA conducted 228 impact inspections at mines with special concerns. These inspections are ongoing. Targeted mines are those that could be at risk of explosion, mines with poor compliance histories or histories of accidents or fatalities, or mines with other warning signs, such as efforts to cover up violations, hotline complaints or mines with poor examination procedures. MSHA has also conducted inspections at mines with recurring problems dealing with adverse physical conditions or that have a poor safety culture.

From testimony by Jeffrey Harris -- a former Massey employee who had spent time at UBB in 2006 -- before this Committee last April, and again from witnesses at a field hearing conducted by the House Education and Workforce Committee in May 2010, we heard the different ways in which operators would use their knowledge of our inspection methods to hide the violations they were committing. For example, Mr. Harris testified that miners at UBB were ordered to put up ventilation curtains when inspectors were in the mine, but to take them down as soon as the inspectors left.

Therefore, MSHA has conducted these impact inspections in a way that has shaken up even the most recalcitrant operators. MSHA has shown up at their mines during “off hours,” such as evenings and weekends. In some cases, MSHA has taken hold of the mines’ phone lines upon arrival to prevent unscrupulous operators from giving advance notice of the inspectors’ presence at the mine. Our inspectors have gone into those mines in force, with sufficient personnel to cover the key parts of the mine quickly before hazards could be hidden or covered up.

The results of the impact inspections have been significant. MSHA inspectors have issued more than 4,200 citations and 396 orders for violations of mine safety and health laws, rules and regulations during these targeted inspections – and miners are safer because we conducted those inspections. Some of the conditions and violations MSHA found during impact inspections are quite disturbing.

For example, in July 2010, MSHA inspectors commandeered company phones during the evening shift at a mine in Claiborne County, Tennessee, to prevent surface personnel from notifying workers underground of MSHA's presence on the property. Inspectors found numerous ventilation, roof support and accumulation of combustible materials violations. These types of conditions potentially expose miners to mine explosions and black lung disease. The operator was also mining into an area without necessary roof support, placing miners at further risk from roof falls. In all, MSHA issued 27 citations and 11 orders as a result of that inspection.

Unfortunately, the mine operator did not get the message. MSHA has now conducted four impact inspections at the mine, based on its ongoing compliance problems and apparent disregard for the law, and in November 2010, the mine was issued a potential pattern of violations notice. During the December 2010 impact inspection -- after the potential pattern of violations letter went out -- inspectors issued four orders for substantial accumulations of combustible coal dust of up to 24 inches in depth covering extensive areas where miners work and travel, and for not properly maintaining a lifeline in the mine's secondary escapeway. Coal and rock dust on the lifeline and reflective markers would have made it more difficult for miners to escape to the surface in the event of an emergency. During the next regular safety and health inspection at the mine on January 19, 2011, MSHA found more violations for accumulations of combustible materials, not maintaining proper clearance on a beltline and inadequately supported ribs -- these violations required equipment to be shut down, which effectively closed the mine to production, except for maintenance personnel. The mine has made improvements, but only after MSHA placed it in MSHA's pattern of violations program.

During another impact inspection in September 2010 at a mine in Boone County, West Virginia, MSHA inspectors arrived in the middle of the evening shift and prevented calls to warn those working underground. Inspectors found that the mine was making illegal deep cuts into the coal seam. In addition, many areas of the working section were without adequate ventilation while these excessive cuts were being taken, exposing miners to the risk of explosion and black lung. The inspection revealed that air readings were not being taken during the work shift and that mine ventilation was being short-circuited. In one particular area, suspended coal dust was so thick it was difficult to see the massive continuous mining machine in operation nearby. Again, these are conditions that can also result in explosions and cause black lung. The inspector issued 11 closure orders during that inspection.

Another important post-UBB enforcement action was MSHA's decision -- for the first time since the passage of the Mine Act -- to seek a federal court injunction under the Mine Act's "pattern of violation" injunction section. We filed the injunction action against Massey Energy's Freedom Energy Mining Company's Number 1 mine located in Pike County, Kentucky. The mine had a pattern of violations of mandatory safety and health standards, which in our view, constituted a continuing hazard to the health and safety of the miners working at the mine. From July 2008 to

June 2010, MSHA had issued 1,952 citations and 81 orders to the company for violating critical standards including improper ventilation, failure to support the mine roof, failure to clean up combustible materials, failure to maintain electrical equipment, and failure to conduct the necessary examination of work areas.

Shortly after we filed the action, the operator announced it was permanently closing its mine and moving the miners to other mines it owned in the area. It agreed to a court order that ensured the safety of miners during the shutdown process and protected the livelihood of the displaced miners.

MSHA has also evaluated other mines for possible injunctive relief, and we will continue to use this remedy when mines are engaged in a pattern of violations and miners are faced with continuing hazards to their safety and health. Yet despite a successful result in the case against Freedom Energy, that case demonstrates that injunctive court actions will not always proceed quickly or result in instant relief.

MSHA has also issued new enforcement policies and alert bulletins addressing specific hazards or problems to ensure that miners and mine operators understand important enforcement policies. We have addressed topics such as the prohibition on advance notice of MSHA inspections, mine ventilation requirements that protect against mine explosions and the right of miners to report hazards without being subject to retaliation.

I have said that the pattern of violations, or POV process, is broken and MSHA is committed to fixing it. In the provision's 33-year-old history, no mine has ever been subject to the full measure of the law contemplated by Congress. While we were reviewing the POV process prior to the UBB disaster, the incident heightened the urgency of moving forward with reforms. Therefore, in October 2010, we put new screening criteria in place for the POV program. This was a critical first step in reforming the current POV program to give the Agency an effective enforcement tool to address mines that repeatedly violate safety and health standards. Notifications of potential pattern of violations have been sent to 14 mines using these new screening criteria and procedures. To date, nine of these mines have completed their evaluation period. Eight mines met their improvement goals for reducing serious violations, and two mines did not. The two mines that did not meet their goals now have the opportunity to submit a response to MSHA's evaluation report, and after review MSHA will determine in each case whether the mine will be given notice of a pattern of violations. Additional mines are still under review for potential pattern of violation actions.

The next step in fixing the broken POV program was the proposed revisions to the existing regulation. As promised, on February 2, 2011, we published a proposed rule on POV, which would revise the existing regulation to reflect the intent of Congress when it wrote the POV provisions, such as not limiting MSHA to looking at enforcement actions that have resulted in final orders and eliminating the potential POV process. MSHA also accelerated other regulatory actions after UBB. Comments on this proposal are due April 4, and I would welcome any comments you might have for the rulemaking record. A public hearing will be scheduled on the proposed rule.

On September 23, 2010, MSHA issued an Emergency Temporary Standard on increasing the incombustible content of combined coal dust, rock dust and other dust in coal mines to minimize the potential for coal dust explosions. This ETS is based on research findings and recommendations by the National Institute for Occupational Safety and Health (NIOSH), within the Department of Health and Human Services. As discussed above, we strongly believe that coal dust played a role in the UBB disaster.

The UBB disaster highlighted the need to ensure that mine operators take seriously their obligation to find and fix the hazards in their mines, even when MSHA is not looking over their shoulders. On December 27, 2010, therefore, MSHA published a proposed rule that would revise requirements for pre-shift, on-shift, supplemental and weekly examinations of underground coal mines. The proposed rule would require that operators identify and correct violations of mandatory health or safety standards and review with mine examiners on a quarterly basis all citations and orders issued in areas where examinations are required. This rule would reinstate requirements in place for about 20 years following the passage of the 1969 Mine Act.

The UBB disaster also enhanced the urgency of our need to address the backlog of cases at the Federal Mine Safety and Health Review Commission (FMSHRC). We have taken a number of actions to attack this problem. First, we are being good stewards of the supplemental appropriations that Congress provided for the Department and FMSHRC to reduce the backlog. The extra resources are helping us to resolve cases, and we continue to explore ways in which we can reduce the number of contested cases.

Last fall, I also launched a pre-contest conferencing pilot program in 3 MSHA districts. The pilot program allows the mining industry to meet on the local level with MSHA to resolve differences over citations and orders before they are contested and add to the backlog. We are currently assessing the pilot program to determine how we can improve consistency and implement the conferencing program throughout MSHA to provide opportunities to resolve disputes before citations and orders are contested. Just last month, MSHA held a stakeholder meeting with representatives from the coal and metal and non-metal industries and labor to

discuss the pilot project and share ideas for an effective pre-contest process. Although it is too early to see the impact, I believe an effective pre-contest conference program could be an important tool in resolving disputed violations so they do not become part of the backlog.

Finally, the UBB disaster reinforced my concerns about MSHA's mine emergency response capabilities. I had already ordered a review to identify gaps in the system before UBB. Sadly, I saw many of those gaps first hand at the UBB site, such as inadequate communications and emergency equipment coordination.

MSHA has made major progress in this area. MSHA's new state-of-the art mobile command center based in Pittsburgh is in service and nearing full operational capability. The mobile command will improve MSHA's capacity to provide better communications, advice and guidance during a mine rescue and recovery. At the UBB site, I had difficulty communicating with the Department's headquarters, and even with MSHA emergency response staff who were in the vicinity of the mine. Our new mobile command should help correct these difficulties. In addition, MSHA is updating its technology, developing standard operating procedures and implementing more comprehensive command and control training for the MSHA district personnel that would be responding to mine emergencies.

As a result of these improvements, we are better able to respond to and manage mine emergencies, but as MSHA continues its thorough review of emergency plans and procedures to identify and fix gaps in the system, we know that more needs to be done. For example, some mine operators do not have available mine emergency equipment and are not prepared to quickly respond to emergencies. We are working with the mining industry, state agencies, drilling companies and others to identify areas for improvement in overall mine emergency response and equipment needs.

Something that should not go unnoticed is that the 2006 MINER Act greatly enhanced our mine rescue response to the Upper Big Branch tragedy. The MINER Act improved the number, availability and quality of training of mine rescue teams. I can tell you that I and the other mine emergency personnel who coordinated the rescue efforts at Upper Big Branch greatly appreciated this improvement in mine rescue team strength and preparedness.

Education, Outreach and Compliance Assistance

As I said at the outset, I believe that most mine operators want to run safe mines. In order to reach and assist these mine operators, MSHA has ramped up its education, compliance assistance and outreach.

First, we have made it a priority to educate mine operators, contractors, miners, trainers and others about how to prevent injuries and fatalities in mines. Let's remember that it was not just the Upper Big Branch disaster that led to mining deaths in 2010. In addition to the 29 miners who died at UBB, 42 other miners died on the job last year for a total of 71 miners, compared to 34 in 2009. And most of these non-UBB related deaths are the types that are recurring in the mining industry.

Despite the attention paid to coal mine fatalities in the media, more miners have died at metal/nonmetal mines than in coal mines, even though the fatality rate is lower for those individuals. From 1990 through 2010, and not including black lung-related deaths, 838 miners perished in metal/nonmetal mines as compared to 820 miners who died at coal mines. Additionally, over 80% of the metal/nonmetal fatalities occurred at surface mines, and a majority of the fatalities were at mines with 20 or fewer employees. I have spoken to members of the mining industry and those who train miners about the causes of these accidents and the practices that can prevent them. We know how to prevent these deaths, but more must be done to put that knowledge to work.

One way to put that knowledge to work is to ensure that the industry is more proactive about safety. Operators should have effective safety and health management systems in place, because these are the best vehicles for establishing a culture of safety in mining workplaces. Well-designed safety and health systems should be developed with everyone in the company involved -- from the CEO to the miners. If properly implemented, these systems ensure that operators routinely find and fix hazards in their mines instead of waiting for MSHA to find them. If MSHA can identify problems in a mine, so can a mine operator. We have begun the process of involving our stakeholders in our plans to move forward by already holding three public meetings on the efficacy of an MSHA safety and health program standard.

We also have had several successful, targeted education campaigns last year. For example, in early 2010, we launched a new program called "Rules to Live By." This is a fatality prevention initiative focusing on 13 frequently cited standards in metal and nonmetal mining and 11 frequently cited standards in coal mining that most commonly caused or contributed to fatal accidents over a 10-year period. This effort combines education and outreach on the front end, followed by enhanced enforcement by MSHA.

In November 2010, we initiated a second phase of "Rules to Live By" focusing on 9 coal safety standards aimed at preventing other catastrophic accidents. We have posted on the MSHA website information on the "Rules to Live By" initiative and the training module used to instruct inspectors on how to handle enforcement of the targeted standards to allow the mining industry to have access to the training. This program will also improve our consistency in enforcing standards.

Also in 2010, we initiated a resource page on our website for the metal and nonmetal industry that includes a “Compliance and Updates” section. And just this year, MSHA released “Safety Pro in a Box,” a resource intended to provide meaningful compliance assistance to small and new operators in the aggregates industry. This safety tool box, which provides helpful compliance guides, was suggested by the National Stone, Sand and Gravel Association (NSSGA) and developed with the association’s assistance.

Quality training is another important component in making our mines safer. Mine operators and contractors need to train miners and mine supervisors on the conditions that lead to deaths and injuries, as well as on measures to prevent them. This is an industry in transition as new miners are replacing the aging workforce. MSHA is working with the mining industry to help ensure that education, training and knowledge transfer keep pace with that transition and does not undercut health and safety gains made over the years.

Moreover, to promote better understanding of the mining industry’s concerns with MSHA’s enforcement program and to improve mine safety and health, MSHA has entered into alliances with a number of mining associations, including the NSSGA, the Industrial Minerals Association-North America and the Portland Cement Association. MSHA’s Administrator for Metal and Nonmetal and I have met frequently with these groups and with many state aggregate associations across the country about their concerns.

MSHA is also teaming up with the Interstate Mining Compact Commission, an organization which represents state mining agencies, to coordinate a federal and state effort that promotes a culture of safety and encourages mine operators to live up to their responsibilities to provide safe and healthful workplaces, to fully comply with state and federal requirements and to provide effective training for their miners.

One important outgrowth of our outreach to our stakeholders is MSHA’s renewed attention to improving consistency in the citations issued by MSHA’s inspectors. To address the concerns that we have heard about consistency, we’ve taken several steps including a review of enforcement actions to ensure that MSHA policies and procedures are followed; a review of agency inspection procedures; field inspection audits to improve inspections; training of Conference Litigation Representatives (CLRs); and mandatory, comprehensive, refresher training for all inspectors. In 2010, we developed a new two-week training program for all MSHA field office supervisors to improve the quality and consistency of enforcement. As previously noted, we are working on establishing an effective pre-contest citation and order conference procedure that will provide earlier opportunities to resolve disputes. We also hope that the conferences will serve as learning experiences for both operators and MSHA personnel so that discrepancies in citations can be corrected going forward.

Eradicating Black Lung

On the health front, MSHA continues to move forward on its “End Black Lung -- Act Now!” initiative, which is a comprehensive strategy to fulfill the promise made 40 years ago with the passage of the 1969 Federal Coal Mine Health and Safety Act to eradicate Black Lung. According to NIOSH, in the past decade, thousands of miners have died from Black Lung disease. Black Lung still kills hundreds of former coal miners each year and severely impairs the lives of many more; there are alarming indications that it is on the rise, even in younger miners.

In December 2009, we launched Phase I of the initiative, which includes education, outreach and enforcement. In October 2010, we launched Phase II by publishing a proposed rule, which would address shortcomings in the sampling process; lower the existing exposure limits for respirable dust; take advantage of new technology for measuring exposure -- the continuous personal dust monitor; and expand medical surveillance, so that miners can take proactive steps to reduce hazardous exposures and better manage their health. As required by the Mine Act, we have addressed economical and technological feasibility in our proposed rule. On February 15, MSHA concluded a series of public hearings held across the country on this proposed rule, and we are encouraging all interested parties to submit comments by May 2, 2011.

Need for Legislation

This Committee has a long history of standing up for our nation’s miners. It has never subscribed to the myth that mining fatalities are an inevitable aspect of the business. I am asking you to again stand up for miners and pass new and needed mine safety legislation.

Almost one year has passed since we lost those 29 miners at Upper Big Branch. We have learned much in that time. One important lesson we have learned is how to better use all of MSHA’s available tools and strategies to fully enforce the Mine Act -- including targeted enforcement, regulatory reforms and compliance assistance. The strategies the Agency has used for its impact inspections have been largely successful. In addition, proposed regulatory actions, if implemented, will make operators more responsible for finding and fixing violations and will highlight those mines with continuing problems. Our extraordinary compliance assistance and outreach efforts also will ensure that operators who want to do the right thing have the tools they need to avoid violations and hazards.

To make MSHA truly effective in cracking down on serial violators who seem indifferent to miners’ health and safety, MSHA needs additional tools that only Congress can provide. We need to change the culture of safety in some parts of the mining industry, so that they are as concerned about the safety of their miners when MSHA is not looking over their shoulders as

when MSHA is there – because MSHA cannot be there all the time. The Administration supports legislation that gives MSHA the enforcement tools it needs to ensure that all mine operators live up to their legal and moral responsibility to provide a safe and healthful workplace for all miners.

I hope that we can work together across the aisle and across the branches to address at least the following areas:

Pattern of Violations: There is a reason that no Administration – Democratic or Republican – has figured out how to effectively apply the current statutory POV program. It is broken and can be improved only so much through regulation. For example, under some circumstances, the POV provisions of the existing Mine Act could potentially put some mines in POV status indefinitely while, under other circumstances, it would be insufficient to ensure long-term change. While we believe we are making significant improvements to the POV program within the confines of the current statute, changes to the law that provide MSHA the tools to engage in a long-term, more remedial approach with chronic violators would be a significant improvement to current law.

Injunctive Relief: The current law does not have a “quick fix” to ensure the immediate safety of miners at mines like the Freedom Energy Mine, where MSHA for the first time ever sought an injunction for a pattern of violation under section 108 of the Mine Act, to change a culture of non-compliance that threatened the safety and health of the miners. While MSHA was successful in compelling the mine to implement additional safety and health protections under section 108(a)(2), the current statute could be simplified to help MSHA in making its case. The lesson learned is this: the litigation process under the existing law is time consuming and does not adequately protect miners, and new legislation should consider language that clearly provides the Secretary of Labor with sufficient authority to act when she believes protecting miner safety and health requires immediate action.

Criminal Penalties: Legislation should strengthen the criminal provisions of the Mine Act. No mine operators should be risking the lives of their workers by cutting corners on health and safety, but for those who would engage in such a practice, we need to put new weight on the side of protecting the lives of miners. We hope and intend that criminal prosecutions under an enhanced Mine Act would continue to be rare. Now they are rare, however, because of the serious obstacles to successful prosecutions. We hope that with new legislation they will be rare because a more serious law will provide a successful deterrent.

These enhanced criminal penalties should also extend to those who provide advance notice of MSHA inspections. In the aftermath of UBB, there were troubling reports of some operators providing advance notice of an MSHA inspection in order to hide violations and conduct that put miners at serious risk. This is an intolerable evasion of the law that is all too common.

Increasing existing criminal penalties for these tactics would send a clear message that this behavior will not be tolerated.

Whistleblower Protection: New legislation must ensure miners are fully protected from retaliation for exercising their rights. Because MSHA cannot be in every mine, finding every hazard every day of the week, a safe mine requires the active involvement of miners who are informed about health and safety issues and can bring dangerous conditions to the attention of their employer or MSHA before these conditions cause an injury, illness or death. Yet, as we heard from miners and family members testifying at the House Education and Labor Committee's field hearing in Beckley last year, miners were afraid to speak up about conditions at Upper Big Branch. They knew that if they did, they could lose their jobs, sacrifice pay or suffer other negative consequences.

The Mine Act has long sought to protect from retaliation those miners who come forward to report safety hazards. But it is clear that those protections are not sufficient and many miners lack faith and belief in the current system. Legislation that creates a fairer and faster process is urgently needed.

Conclusion

Thank you for allowing me to testify before the Committee. This coming Tuesday is the one-year anniversary of the tragedy at Upper Big Branch. Along with the families, we mourn the deaths of these 29 miners. I know their loved ones want answers about what happened on that day, and so do I. The team is moving forward with the investigation.

Going forward, it comes down to this: MSHA cannot be at every mining operation every shift of every day. There could never be enough resources to do that, but even if there were, the law places the obligation of maintaining a safe and healthful workplace squarely on the operator's shoulders. Improved mine safety and health is a result of operators fully living up to their responsibilities. Taking more ownership means finding and fixing problems and violations of the laws and rules before MSHA finds them -- or more importantly -- before a miner becomes ill, is injured or is killed. Mines all across this country operate every day while adhering to sound health and safety programs. There is no reason that every mine cannot do the same.

I look forward to working with the Committee to find the best way to accomplish our shared goals of preventing another mine disaster and providing our nation's miners the safety and health protections they deserve. We owe the victims of the Upper Big Branch disaster and their families no less.