



FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF THE CHAIRMAN

October 30, 2007

Hon. Howard. P. McKeon
Ranking Member
Committee on Education and Labor
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative McKeon:

The Federal Mine Safety and Health Review Commission is pleased to comment on the publicly introduced version of H.R. 2768 ("the S-MINER Act"). The Commission is an independent adjudicatory agency created by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) ("Mine Act"), to provide administrative review of contested citations or orders issued under the Mine Act and to render decisions in those cases. The Commission consists of Administrative Law Judges ("ALJs") who preside over evidentiary hearings involving contested citations or orders and a five-member Commission that hears appeals from the judges' decisions and issues decisions resolving those cases.

Although the proposed legislation contains a number of provisions designed to further improve miner safety and health, the Commission's comments on H.R. 2768 are limited to those provisions that directly affect the process of contesting citations or orders before the Commission or the manner in which Commission ALJs are to decide cases before them. In particular, the Commission is concerned about two provisions contained in H.R. 2768 and suggests changes in those provisions.

First, section 5(h)(2)(C) would require that the Commission, in assessing final penalties, utilize the same point system developed by the Secretary of Labor for proposed penalty assessments. The Commission believes that this provision would conflict with the Commission's role as an independent adjudicatory agency and would also result in situations where application of the point system to final penalties cannot accurately and fairly reflect the facts presented at a trial. Please note that the Administration is still reviewing this provision and more views may be forthcoming.

Second, section 5(f) of H.R. 2768 would require that a mine operator seeking to challenge a citation or proposed penalty assessment must also place in escrow the amount of the proposed assessment. The Commission believes that requiring all mine operators to make an escrow payment before bringing a challenge would make the process unduly complicated and confusing and might vastly multiply the numbers of errors made by operators in seeking Commission hearings.

Importance of the Commission's Independent Role

The legislative history of the Mine Act makes clear that the 95th Congress created the Commission as an independent agency because of concerns about the manner in which contested matters were being adjudicated under the Federal Coal Mine Health and Safety Act of 1969, Pub. L. No. 91-173, 83 Stat. 742 ("Coal Act"), a predecessor to the Mine Act. Under the Coal Act, investigative, prosecutorial, and adjudicatory functions involving mine safety and health all resided within the Department of the Interior.

After discussing the adjudicatory scheme under the Coal Act, the Report of the Senate Committee on Human Resources stated that "[t]he Committee believes that an independent Commission is essential to provide administrative adjudication which preserves due process and instills much more confidence in the program." S. Rep. No. 95-181, at 47 (1977). The Report recognized "that there are organizational and administrative justifications for avoiding the establishment of new administrative agencies. However, the Committee believes that the considerations favoring a completely independent adjudicatory authority outweigh these arguments." *Id.*

A major area of concern under the Coal Act involved the settlement of civil penalties. The Report explained that, under the bill which became the Mine Act, "a penalty once proposed and contested before the Commission may not be compromised except with the approval of the Commission. . . . By imposing these requirements, the Committee intends to assure that the abuses involved in the unwarranted lowering of penalties as a result of off-the-record negotiations are avoided. It is intended that the Commission . . . will assure that the public interest is adequately protected before approval of any reduction in penalties. The Committee recognizes that settlement of penalties often serves a valid enforcement purpose. The provisions . . . only require that such settlements be a matter of public record and approved by the Commission or Court." *Id.* at 45.

Moreover, a statement by Senator Williams, Chairman of the Senate Committee on Human Resources and principal author of the Mine Act, emphasized the importance of the Commission's independent role in ensuring that the Act would be properly implemented:

One of the essential reforms of the mine safety program is the creation of an independent Federal Mine Safety and Health Review Commission charged with the responsibility of assessing civil penalties for violations of safety or health standards, for reviewing the enforcement activities of the Secretary of Labor, and for protecting miners against unlawful discrimination.

It is our hope that in fulfilling its responsibilities under the Act, the Commission will provide just and expeditious resolution of disputes, and will develop a uniform and comprehensive interpretation of the law. Such actions will provide guidance to the Secretary in enforcing the [Mine Act] and to the mining industry and miners in appreciating their responsibilities under the law. When the Secretary and mine operators understand precisely what the law expects of them, they can do what is necessary to protect our Nation's miners and to improve productivity in a safe and healthful working environment.

Hearing on the Nomination of Members of the Federal Mine Safety and Health Review Commission before the Senate Committee on Human Resources, 95th Cong., 1 (1978). Indeed, Senator Williams' statement concerning the independent role of the Commission was given significant weight by the Supreme Court in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 214-15 (1994) (citations omitted).

Proposal to Require Commission Administrative Law Judges to Apply the Penalty Assessment Regulations Promulgated by the Secretary of Labor

Section 5(h)(2)(C) of H.R. 2768 would require that "in any review requested by a mine operator, or in settling cases, the Commission shall utilize the same point system as that developed by the Secretary for proposed assessments so as to ensure consistency in operator penalty assessments." The penalty point system for proposed assessments is currently set forth in regulations promulgated by the Secretary at 30 C.F.R. Part 100. The civil penalty proposed by the Secretary for regular assessments is based on a formula set forth in those regulations. 30 C.F.R. § 100.3. This formula is based on sections 105(b) and 110(i) of the Mine Act and includes factors such as negligence, gravity, size of the operator's business, and good faith abatement.

The Commission believes that requiring its ALJs to apply the Secretary's point system in assessing *final* penalties would conflict with the Commission's role as an independent adjudicatory agency. Under the split enforcement model adopted by the 95th Congress, MSHA enforces the Mine Act, and the Commission adjudicates disputes arising under the Act and provides for independent, *de novo* review of the circumstances surrounding an alleged violation and MSHA's rationale for seeking a particular civil sanction. In deciding cases and determining appropriate civil penalties under the Mine Act, Commission ALJs apply the same six statutory penalty criteria in section 110(i) based on the evidence presented to them at the hearing as well as their experience and expertise as judges who routinely resolve Mine Act enforcement disputes.

Because of the *de novo* nature of hearings before Commission ALJs, the ALJ may in some instances assess a penalty that differs substantially from MSHA's proposed penalty. In a hearing before an ALJ, after MSHA has presented its evidence supporting the citations and proposed penalties in question, the operator is allowed to present countervailing evidence,

evidence of mitigating circumstances, or evidence indicating that the MSHA inspector may have misapplied the safety or health standard in question. This information often was not known by the MSHA inspector who issued the citation and therefore was not considered by MSHA's Office of Assessments when proposing a penalty. Because of time constraints, an MSHA inspector must issue a citation whenever he observes a condition that he believes violates a standard without first conducting a complete investigation. Once all the evidence has been presented to the judge, MSHA's preliminary characterizations as to the relative seriousness or operator culpability surrounding the citation may not prevail. Conversely, the evidence adduced at a full hearing may demonstrate higher levels of seriousness or negligence than originally alleged by MSHA, thus warranting a penalty assessment by the judge that exceeds MSHA's proposed penalty.

Moreover, although MSHA's point system is normally a useful mechanism for proposing penalties for the thousands of citations that MSHA inspectors issue each year, it is important that Commission ALJs have the discretion to weigh the six statutory criteria differently in those instances where the facts show that a different penalty amount is warranted. While the point system generally provides a fair and appropriate result, there remain many situations where a mechanical application of the point system simply cannot accurately and fairly address the facts adduced at a trial.

For example, a small aggregate mine operating on a seasonal basis may contend that it was assigned an unduly large number of penalty points by MSHA under the history of previous violations criterion because it was only inspected a few days during previous years. MSHA calculates the penalty points for this criterion based on the "average number of assessed violations per inspection day." 30 C.F.R. § 100.3(c). However, a large coal mine that has received a relatively large number of citations may be assigned the same number or even fewer penalty points under this criterion because it was inspected quite frequently during past years over many inspection days. Under the bill, an ALJ presumably would be unable to take these facts into account when assessing penalties for these two very different operators. The operators of small aggregate mines would conclude that they are being excessively penalized and that the Commission no longer has the authority to independently review the facts relating to the statutory penalty criteria.

Similarly, ALJs have reported that the statutory size criterion ("appropriateness of the penalty to the size of the business of the operator charged") may carry more weight when dealing with small, seasonal aggregate mines. In such circumstances, the penalties assessed by the ALJ might end up being lower than they would be for similar violations committed by a large operator or lower than those obtained by using MSHA's penalty formula because the judge, upon hearing all of the evidence at trial, may decide that it is appropriate to take the operator's small size into special consideration. Transparency can best be achieved in such instances by having the ALJ set forth these facts in his or her decision rather than requiring the judge's penalty assessment to rigidly conform to MSHA's penalty formula.

In any event, the Commission has made clear that its ALJs must support on the record the assessment of any penalty that differs substantially from MSHA's proposed penalty.¹ The Commission has also explained that a judge's exercise of discretion in assessing a penalty is not limitless and will be reversed if it is not supported by the record or is inconsistent with the statutory criteria.²

Because it is expected that the Commission's caseload will increase significantly in the next few years,³ the Commission is taking steps to ensure that its ALJs will be able, among other things, to devote the time necessary to ensure that penalty assessment issues are properly addressed in their written opinions. Anticipating a surge in new cases in FY 2008, the Commission plans to reestablish a clerkship program whereby entry-level attorneys would be hired to serve two-year clerkships in support of the Commission's Office of Administrative Law

¹ When . . . it is determined that penalties are appropriate which substantially diverge from those originally imposed, it behooves the Commission and its judges to provide a sufficient explanation of the bases underlying the penalties assessed by the Commission. If a sufficient explanation for the divergence is not provided, the credibility of the administrative scheme providing for the increase or lowering of penalties after contest may be jeopardized by an appearance of arbitrariness.

Jim Walter Resources, Inc., 28 FMSHRC 579, 606-07 (August 2006) (quoting *Sellersburg Stone Co.*, 5 FMSHRC 287, 293 (March 1983)).

² While Commission judges are accorded broad discretion in assessing civil penalties under the Mine Act, such discretion is not unbounded and must reflect proper consideration of the penalty criteria set forth in section 110(i) and the deterrent purpose of the Act. *Westmoreland Coal Co.*, 8 FMSHRC 491, 492 (April 1986) (citing *Sellersburg Stone Co.*, 5 FMSHRC 287, 290-94 (Mar. 1983), *aff'd*, 736 F.2d 1147 (7th Cir. 1984)). In reviewing a judge's penalty assessment, the Commission determines whether the penalty is supported by substantial evidence and is consistent with the statutory penalty criteria. *Hubb Corp.*, 22 FMSHRC 606, 609 (May 2000). While "a judge's assessment of a penalty is an exercise of discretion, assessments lacking record support, infected by plain error, or otherwise constituting an abuse of discretion are not immune from reversal. . . ." *U.S. Steel Corp.*, 6 FMSHRC 1423, 1432 (June 1984).

Jim Walter Resources, Inc., 28 FMSHRC at 606.

³ As a result of the recent passage of the MINER Act and revisions to the civil penalty and mine closure sanctions administered by MSHA, the Commission has experienced a dramatic rise in the number of contest cases filed by mine operators. Indeed, the number of cases filed with the Commission has risen from 2440 filed in FY 2005 to 4097 filed in FY 2007. The trend of new filings so far in October 2007 (approximately 334 as of October 18) indicates that the number of new contests will continue to increase dramatically in FY 2008.

Judges.⁴ An upsurge in cases coupled with a likelihood that fewer cases will be settled before a trial on the merits mandates that clerks be hired to assist the judges in keeping the caseload manageable, providing timely disposition of disputes, and ensuring that written decisions continue to address all relevant issues, including the basis for assessing particular penalty amounts.

Finally, explicitly requiring Commission ALJs to apply the Secretary's point system in approving proposed *settlements* between the Secretary and mine operators also raises concerns about the independent role of the Commission. The Commission believes that its ALJs should not be separately required to calculate the appropriate amounts for settlement of cases using the Secretary's point system. If the Mine Act is amended to require that the Secretary use the point system in settling cases in accordance with section 5(h) of the bill, the statute should also require that the Secretary provide a showing to the ALJ that the proposed settlement amount has been accurately calculated based on the Secretary's point system. In particular, the statute should require that the Secretary provide to the ALJ an amended proposed penalty assessment reflecting the changes from the original proposed assessment and accompanied with a demonstration that the settlement amount is based on the point system. The ALJ would then determine whether the Secretary has made an adequate showing that the proposed settlement amount is consistent with the point system and would then approve the settlement so long as it is otherwise consistent with the statute and the public interest.

Proposal to Require Escrow Payments as a Condition of Challenging Proposed Penalty Assessments Before the Commission

Section 5(f) of the bill would require that a mine operator seeking to challenge a citation or proposed penalty assessment must, "not later than 30 days from the receipt of the notification of a citation issued by the Secretary, notify the Secretary that the operator intends to contest the citation or proposed assessment of a penalty and to place in escrow the amount of the proposed assessment." Furthermore, "[i]f notification and proof of escrow is not provided to the Secretary, the citation and the proposed assessment shall be deemed a final order of the Commission and not subject to review by any court or agency." Finally, section 5(f) would expand the Secretary's authority to collect civil penalties by providing that "[i]n the event that a mine operator refuses to comply with a final order of the Commission to pay civil monetary penalties and statutory interest, the Secretary shall have the authority to issue an order requiring the mine operator to cease production [until] such final orders of the Commission have been paid in full."

The current statutory language in section 105(a) of the Mine Act requires only that a mine operator notify the Secretary within 30 days after receipt of a proposed penalty assessment that it intends to challenge the underlying citation and proposed penalty. Under the current

⁴ A clerkship program had been in place when the 1977 Act was first passed, and under its terms each ALJ was assigned a clerk. The program was discontinued in the 1980s, but the Chief Judge did retain a clerk to assist with the management of the Office of Administrative Law Judges. The Commission's FY 2008 request is for four (4) clerks, or one for every two judges.

statutory scheme, many mine operators who fully intend to contest a citation and proposed penalty assessment are often confused about the procedures to be followed or may inadvertently err in bringing their challenges to the Commission. Some examples of current confusion include: (1) assuming that the proposed assessment need not be separately challenged because the mine operator had already contested the citation itself before the corresponding proposed penalty assessment was issued; (2) checking the wrong boxes on a form that may contain dozens of proposed penalties; (3) assuming that a request for an informal conference with MSHA will preserve the operator's right to challenge the proposed penalty; and (4) sending the contest form to the wrong address. Such good faith errors in bringing challenges to the Commission are often committed by small mine operators who may not have significant experience in challenging the Secretary's enforcement orders – for example, small and, often, seasonal mine operators in the sand and gravel industry.

The Commission is concerned that an additional requirement that *all* mine operators seeking to challenge a proposed penalty assessment before the Commission must make an escrow payment in order to bring their challenges will make the procedures for contesting such proposed penalties unduly complicated and even more confusing and may vastly multiply the numbers of errors made by operators in seeking Commission hearings. In addition, such an across-the-board escrow payment requirement will likely pose serious administrative problems for both the Commission and MSHA. During this fiscal year alone, between 3,500 and 4,000 new cases will be filed by operators before the Commission, and it is likely that the number will be even greater in subsequent years. The Commission is especially concerned that under the proposed requirements its ALJs may be compelled to spend a substantial amount of time in resolving questions regarding whether the escrow payment requirement has been met with regard to each challenged penalty assessment. MSHA may also have concerns about tracking escrow payments, and we defer to it as to the administrative burden that such a requirement would impose.

In addition to concerns about the scope of any escrow payment requirement, the Commission believes that other language in section 5(f) may also pose problems. First, section 5(f) provides that the operator must notify the Secretary of its intent to contest a citation or proposed penalty assessment “not later than 30 days from the receipt of the notification of a *citation* issued by the Secretary” (emphasis added). However, the corresponding current statutory language that would be replaced refers to “the notification issued by the Secretary.” The preceding two sentences of the statute make clear that the notification being referred to is the notification of the proposed penalty assessment, not any notification of a citation.⁵ Indeed, an operator could not contest a proposed penalty assessment until it has received notification of that proposed assessment – an event which typically occurs days, weeks, or sometimes months after the citation has been issued.

Second, the language of section 5(f) seems unclear with regard to the responsibility of the operator to make an escrow payment. It provides that, not later than 30 days after the operator receives notification, it must notify the Secretary that it “*intends* to contest the citation or

⁵ A citation charges a mine operator with a statutory or regulatory violation but does not itself include a proposed penalty for the violation.

proposed assessment of a penalty and to place in escrow the amount of the proposed assessment” (emphasis added). This language is unclear with regard to when the operator is to actually make an escrow payment. Further, the next sentence, without providing a definite deadline, simply states that “[i]f notification and proof of escrow is not provided to the Secretary, the citation and the proposed assessment of penalty shall be deemed a final order of the Commission and not subject to review by any court or agency.” The language is unclear regarding both when the payment must be made and to whom. It also creates ambiguity as to when the proposed penalty assessment is deemed a final order. This sentence would replace current language in the Mine Act which, in contrast, makes clear that, if an operator fails to contest a proposed penalty assessment within 30 days of receiving it from the Secretary, the assessment is at that point deemed a final order.

The Commission is pleased to have this opportunity to comment on the proposed legislation. Please feel free to contact us if you have any questions or require any additional information.

Sincerely,



Michael F. Duffy
Chairman

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939



*Submitted for the
review by Mr. McKee*

OCT 29 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Miller:

I appreciate the concern for the safety and health of our nation's miners expressed by the Committee on Education and Labor with the introduction of H.R. 2768, the "Supplemental Mine Improvement and Emergency Response Act of 2007" (the "S-MINER Act"), and H.R. 2769, the Miner Health Enhancement Act of 2007. I share the Chairman's commitment to improving mine safety and want to identify those elements of this legislation that could be beneficial as well as those that would be counterproductive and could actually compromise mine safety.

The Mine Safety and Health Administration (MSHA) supports a number of provisions in the legislation. For example, Section 5(f) provides MSHA additional enforcement authority to issue a withdrawal order for a mine operator's failure to pay a civil penalty. Section 5(h) would synchronize MSHA's penalty assessment system with the Federal Mine Safety and Health Review Commission's review of penalties to ensure consistency. Section 5(k) gives attorneys representing the Department and MSHA the ability to pursue investigative sources without fear of adverse action by any State court or bar association and broadens the definition of "mine operator" to reach all necessary parties on the ownership/management side.

These provisions, however, are offset by the potential harm that could come from enactment of the two bills' other elements. Our review found that they would mandate 10 regulatory changes, impose at least 16 new mandates, create new unneeded offices within MSHA, and fundamentally change the MSHA accident investigation process.

In many cases, the regulatory mandates in the S-MINER Act would overturn regulatory processes that were required by the MINER Act and are still ongoing, and several regulatory mandates in the S-MINER Act are imposed without providing for stakeholder participation. Even if all of the changes contained in the S-MINER Act could be individually justified, taken as a whole, the proposed changes would cause serious administrative problems for MSHA, weaken several critical MSHA safety standards, and in some instances, impose new safety requirements that are unrealistic or unlikely to make a substantive improvement in mine safety and health.

You can now file your MSHA forms online at www.MSHA.gov. It's easy, it's fast, and it saves you money!

The Mine Improvement and New Emergency Response Act (MINER) Act was the most significant mine safety legislation in nearly 30 years. Mine owners, miners, suppliers and MSHA have worked together to meet the goals set in this important legislation. In the 16 months since its enactment in June 2006, MSHA has been diligently implementing it and has made remarkable progress. By the end of the year, MSHA will issue regulations on mine rescue teams, and have the recommendations of the belt air panel and the National Institute for Occupational Safety and Health (NIOSH) research report on refuge alternatives for final consideration.

MSHA has taken other actions in addition to the changes mandated by the MINER Act. MSHA has revised its civil penalty regulations to significantly increase penalties for violating MSHA safety and health standards; now requires multi-gas detectors for miners working alone or in groups; initiated Pattern of Violations enforcement against several mine operators; and, has asked the Solicitor's office to file legal actions against mine operators who do not pay their civil penalties.

The MINER Act has made significant positive changes to mine safety laws. Many of these changes have been implemented recently. In many cases, the regulatory mandates in the S-MINER Act would overturn regulatory processes that were required by the MINER Act. Taken as a whole, the proposed changes would cause serious administrative problems for MSHA, weaken several critical MSHA safety standards, and in some instances, impose new safety requirements that are unrealistic or unlikely to make a substantive improvement in mine safety and health. For these reasons, the Department of Labor opposes H.R. 2768 and H.R. 2769 in their current forms.

I urge the Committee on Education and Labor to modify the bills to ensure continued successful implementation of last year's MINER Act and to avoid the significant problems I have identified in the new bills. I have enclosed with this letter a summary that outlines the major problems with H.R. 2768 and H.R. 2769. MSHA stands ready to work with Congress to further improve mine safety and health.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in cursive script that reads "Richard E. Stickler".

Richard E. Stickler

Assistant Secretary for
Mine Safety and Health

cc: The Honorable Howard P. "Buck" McKeon, Ranking Member

Enclosure

Analysis of H.R. 2768, the Supplemental Mine Improvement and Emergency Response Act of 2007

Section 4(a), Post-Accident Communications: This section of H.R. 2768 mandates all underground coal mines install a hardened "leaky feeder" communications system. This provision is problematic for several reasons. Given all the work being done by NIOSH, MSHA, and the private sector to develop a wireless system, it is premature to mandate the "leaky feeder" system nation-wide now. Mandating the use of the "leaky feeder" or other hard wire systems may reduce the incentives for industry to develop and deploy wireless systems that will provide greater protection to miners. Furthermore, if and when a truly wireless system is developed, it will make the "leaky feeder" system obsolete. This requirement would result in significant costs for a system which would essentially become obsolete relatively soon because mine operators are required to have a truly wireless system in place by June 2009. Finally, the "leaky feeder" communications system cannot feasibly be "hardened" to survive an explosion in many cases. In the event of a fire, explosion, or roof fall, a "leaky feeder" system may not be more protective than systems currently being used.

Section 4(b), Rescue Chambers: This section of H.R. 2768 would mandate the installation of rescue chambers within 1,000 feet of the nearest working face in each working section of an underground coal mine. Mandating rescue chambers precludes other options that may provide greater protection to miners, such as boreholes to the surface from locations further than 1000 feet from the working face. In addition, mandating rescue chambers discourages innovation to develop better alternatives. Moreover, the installation of rescue chambers may not be feasible in every underground coal mine, particularly mines where the mining height may not be higher than 36 inches.

NIOSH is currently testing and evaluating rescue chambers, but testing has not been completed and criteria specifications have not been developed. Such information is critical to ensure that a rescue chamber provides a safe environment in the event of a mine emergency. Depending on the type of mine emergency, an entry with a borehole to the surface may be a safer alternative than a rescue chamber during a fire if the rescue chamber cannot adequately dissipate heat. To alleviate these problems, MSHA believes that testing needs to be completed, criteria specifications need to be developed, and alternatives, such as boreholes, hardened rooms and barricades, need to be permitted.

Section 4(c) (1), Repealing the MINER Act provisions on Mine Seals: MSHA has been following the requirements of this provision, having recently issued an Emergency Temporary Standard (ETS) on mine seals and completed public hearings on the ETS. To re-open this process would require the agency to go through another rulemaking on mine seals. This would cause confusion within the industry and put on hold

improvements already being made to underground mine seals, which would be counterproductive and could actually compromise mine safety.

Section 4(c) (2), New Mine Seal Requirements: This section of H.R. 2768 would require MSHA, by December 15, 2007, to write a new standard on mine seals. It also requires that mine operators sample behind mine seals through boreholes drilled from the surface.

The regulations governing mine seals should provide an incentive for operators to build stronger seals. The requirement in this section for mine operators to monitor all seals removes the incentive to build stronger seals. By requiring mine operators to monitor behind all seals, they will likely build the lowest-cost seals, which are those that have a lower psi rating. Another problem with the monitoring provision is that it does not prescribe what actions mine operators should take if they find an explosive atmosphere behind a seal. The provision requiring that mine operators sample behind mine seals through boreholes drilled from the surface is problematic for two reasons: (1) it is not always feasible to sample from the surface due to geologic conditions and surface property rights; and (2) boreholes have metal casings, introducing an ignition source and other safety hazards into a sealed area that may be liberating methane.

Section 4(c) (3), Ventilation Controls: This section would require MSHA to issue an interim final rule (IFR) within a year to strengthen mine stoppings, which control ventilation within an underground mine. The first problem with this provision is the impracticability of a one-size-fits-all rule without input from stakeholders. By short-circuiting notice and comment rulemaking, the agency would not be able to solicit input from stakeholders on the most effective ways to maximize miner safety prior to the issuance of an IFR. Second, the requirements of the bill could be counterproductive in some mines. For example, there are mines where convergence or other geologic conditions necessitate other types of ventilation controls.

Section 4(d) (1), Flame Resistant Conveyor Belts: This section of H.R. 2768 requires MSHA to issue an IFR to mandate flame resistant conveyor belts in mines. Current law, as prescribed in the MINER Act, established a Belt Air Technical Study Panel to study this issue and report its findings to MSHA and Congress. MSHA expects the panel to complete its work on time and meet the deadline of December 2007 set by the MINER Act. To mandate a policy course on belt air without the findings of the expert panel would be counterproductive. In addition, the legislation states, "Such action by the Secretary shall not diminish in any way the obligation of the Secretary to take appropriate additional action under this Act following completion of the reports by the Technical Study Panel pursuant to section 514." This provision has the potential of causing confusion. If the Belt Air Technical Study panel recommends a higher standard of flame resistant belt, the bill does not specify whether MSHA is obligated to follow the panel or the legislation. Finally, the requirement for issuing an interim final rule will

prohibit stakeholders with potentially superior safety recommendations from participating in the rulemaking.

Section 4(d) (2), Banning Belt Air: H.R. 2768 would prohibit using belt air to ventilate the working face of the mine. This provision is unnecessary and could have the effect of decreasing safety under existing MSHA standards. Use of belt air to ventilate mine faces can actually improve safety in some mining environments where there are problematic roof conditions that limit the number of underground openings. The proposed ban on the use of belt air also does not take into consideration the findings and recommendations of the Belt Air Technical Study Panel that was created under the MINER Act. Nor does it permit a mine-specific variance (a petition for modification) where belt air would improve safety protections or add sufficient additional provisions to ensure comparable safety protections. In addition, a ban on the use of belt air (1) may result in lower pressure in the intake escape-way in some mines thereby allowing contaminants to enter the escape-way in the event of a fire; and (2) may result in increased roof-fall hazards to miners who must drive an additional separate entry for the belt conveyor.

Section 4(e), Pre-Shift Review of Mine Conditions: H.R. 2768 mandates a new pre-shift communications program for underground coal mines. MSHA is opposed to this provision because it is extremely complicated and impractical. This provision raises practical implementation problems because of irregular work shifts, the number of persons involved, and the fact that miners and pre-shift personnel may use different portals that may prevent a physical meeting between those individuals required to meet. Section 4(e) also creates enforcement issues because it may be difficult or impossible for MSHA to be physically present to see the verbal exchange.

Section 4(f), Atmospheric Monitoring: MSHA does not support this very broad mandate as written. The proposed provision would require monitoring of miles of underground mines, which may actually reduce safety by diluting focus. MSHA supports requiring monitoring carbon monoxide levels in high risk areas of mines, such as conveyor belts, battery charging stations, electrical installations and diesel fuel storage areas.

Section 4(h) (2), Methane Monitors: MSHA opposes this provision, which requires multi-gas detectors for every miner "who may be working alone." This provision actually weakens the current MSHA requirement that all miners working alone and all groups of miners *must* be equipped with a multi-gas detector. This provision would also present enforcement uncertainties if the MSHA inspector has to determine that miners who are not working alone when the inspector is present "may" be working alone at a later time.

Section 4(h), Lightning: This provision requires mine operators to adopt "appropriate administrative controls," "including withdrawal of miners from all underground areas of the mine" when lightning is present. MSHA opposes this provision because the requirements are ambiguous. For example, it is not clear what "administrative controls" would be appropriate to meet this requirement. In addition, it is not clear what the appropriate circumstances would be to evacuate a mine. The ambiguity of this provision makes it impossible for mine operators to comply with it.

The provision does not appear to provide any additional safety protection to miners not afforded under the ETS for mine seals. The ETS on mine seals requires mine operators to follow a gas sampling protocol that includes baseline sampling and periodic monitoring. Under the ETS, if the atmosphere behind a seal is explosive, an operator would be mandated to *immediately* implement an action plan or withdraw miners from the affected area. The mine seal ETS also requires the removal of insulated cables from areas to be sealed and metallic objects through seals, development of an action plan to address explosive atmospheres behind mine seals less than 120psi, and requirements for training of persons who sample, construct, and repair seals. These protections better address any dangers that lightning poses to sealed areas within a mine.

Section 4(i), SCSR Inspection Program: MSHA opposes this provision, because it is both unrealistic and not necessary. Section 4(i) would require MSHA to test at least 5 percent of self-contained self-rescuers (SCSRs) every 6 months. Under MSHA's best estimate, once the current backlog of manufacturing SCSR is eliminated, there will be approximately 200,000 SCSR in underground coal mines. Testing an estimated 10,000 SCSR as required by this provision would require a commitment of significant resources from both MSHA and NIOSH and remove a large number of SCSR from service where they could otherwise be used to protect miners. Currently, MSHA and NIOSH have a joint testing program that tests approximately 200 SCSR each year, and MSHA is requiring mine operators to register their SCSR online so that any deficient SCSR can be identified and replaced. These programs are adequate to ensure the safety of SCSR in mines.

With regards to subparagraph (3) of Section 4(i), MSHA currently notifies underground coal mine operators immediately of problems or defects with SCSR that the Agency is aware of. For these reasons, this provision is unnecessary.

Section 5(c), Office of Ombudsman: MSHA opposes this new provision as unnecessary, since MSHA has one of the most protective whistleblower statutes. Under the Mine Act: (1) Any miner or applicant for employment who makes safety complaints or engages in protected activity may file a complaint with the Secretary who will investigate and prosecute, if found meritorious; (2) A discharged miner may be temporarily reinstated during the pendency of litigation if the claim is nonfrivolous; (3) If the Secretary declines to prosecute, a miner may file an independent claim with the

Mine Safety and Health Review Commission. MSHA also already has a toll-free number and protects the confidentiality of health and safety complainants.

Section 5(d)(1) and Section 5(d)(2), Pattern of Violation: MSHA opposes paragraphs (1) and (2) of this new provision because:

1. MSHA has recently implemented a new pattern of violations policy to accomplish the purpose of this provision;
2. The requirements are premature because they would not give the Agency time to evaluate safety and health improvements under the Agency's new policy; and
3. The determination of a pattern of violations should be made at a level higher than that of an inspector.

Section 5(d) (4), Fines for a Pattern of Violations: MSHA opposes this new provision because:

1. MSHA has recently implemented a new pattern of violations policy to accomplish the purpose of this provision; and
2. The requirements are premature because they would not give the Agency time to evaluate safety and health improvements under the Agency's new policy.

Section 5(e), Notice of Abatement: MSHA opposes this provision, as it would weaken current safety and health regulations. Currently, MSHA personnel generally verify that a mine operator has abated a hazard. Under this provision, all a mine operator would have to do is contact MSHA and inform the agency that the citation is abated.

Section 5(g), Maximum and Minimum Penalties: MSHA opposes this amendment because:

1. MSHA recently greatly increased civil penalties under a final rule promulgated on March 22, 2007;
2. The MINER Act included new larger penalties -- up to \$220,000 -- for flagrant violations;
3. The Agency requires additional time to evaluate the effect of these higher penalties on compliance before adding additional penalties or raising existing penalties; and
4. The provision appears to reduce the existing statutory penalty of up to \$220,000 for flagrant violations.

Section 5(j), Imminent Dangers: MSHA opposes this change because the term "imminent danger" is a term of art that is defined in the Mine Act. The provision would promote inconsistent and inappropriate use of the term "imminent danger", because an imminent danger determination requires an on-the-spot evaluation of each condition.

Section 6(a), Supplementing Rescue, Recovery, and Incident Investigation Authority: MSHA opposes this new provision because:

1. It limits the Assistant Secretary's discretion to manage the agency;
2. It is unnecessary because the recently issued Emergency Mine Evacuation final rule contains a requirement for a call center;
3. The Agency is exploring the potential to use MSHA employees to perform this service; and
4. The call center is already in use.

Section 6 (c), Mine Location Maps:

MSHA opposes this provision as written. First, the scope of the mandate is extremely large. There are over 60,000 abandoned mines in the United States. For many, MSHA does not have latitude, longitude or congressional district data. Moreover, it will be difficult to efficiently find the location of abandoned mines without such data and given the passage of time and the difficult terrain in which mines are often located. Some mining operations are also portable (e.g., crushing operations), further complicating data collection.

Second, the data collection called for by this mandate will be very expensive and extremely difficult to keep current since mine maps are continually being updated. Digital format scanning, information technology storage upgrades, efficient Web uploads and ongoing maintenance will be extremely expensive as well. It is also unclear what if any benefit to mine safety or health will be created by this resource intensive activity.

Section 6(d), Requirements of Emergencies and Serious Incidents: MSHA opposes this provision. Section 6(d) would create a bifurcated notification system of 15 minutes or one hour depending on the severity of the incident. Current MSHA regulations require a 15 minute notification for all incidents. The requirements of Section 6(d) are less stringent than the current MSHA requirement for reporting all of the incidents listed in this section, which could compromise mine safety.

Section 6(e), Mine Rescue Teams: MSHA opposes this amendment. MSHA issued a proposed mine rescue team rule implementing Section 4 of the MINER Act on September 6, 2007. Public hearings are being held in October.

Section 6(f) (2), Medical Emergency Technician Training: MSHA does not support Section 6(f) (2). MSHA does not have an Emergency Medical Technician (EMT) requirement. MSHA requires that all coal miners be trained in basic first aid.

Section 6(g), Accident and Investigations: MSHA opposes this requirement for the following reasons.

1. Accident investigation procedures are more appropriately dealt with through policy manuals rather than through regulations because they have a law enforcement purpose and need to be flexible enough to deal with myriad circumstances including possible criminal conduct.
2. The requirement that the accident report make recommendations for regulatory and statutory changes places an inappropriate policy burden on the career professional accident investigators.
3. Mandatory public hearings at the conclusion of the investigation could interfere with law enforcement efforts. Publication of accident reports coincides with enforcement actions and possible criminal referrals and is immediately followed by a litigation process; public hearings could jeopardize these enforcement efforts.

Section 6(g) (3), Accident and Incident Investigations: MSHA opposes Section 6(g) (3). Mandatory "reinvestigation" of accidents by the Chemical Safety Board (CSB) at the request of victims or representatives of miners will jeopardize MSHA enforcement efforts. The CSB has no special mining expertise and will wind up relying on the same MSHA experts who participated in MSHA's investigations. It will also not have access to all the relevant information, including confidential informant statements from the MSHA investigation.

This section is also unclear as to which report will be the authoritative official report on the accident. Nor is it clear on which report will be used to support MSHA enforcement action. In every case, the CSB report is likely to undercut and jeopardize the MSHA enforcement effort. If the MSHA investigation uncovers criminal conduct, two investigations and two government reports reaching different conclusions will complicate any criminal prosecution to the point where DOJ may not be able to prosecute the case.

Section 7(a), Respirable Dust; Respirable Silica Dust: MSHA has concerns with this amendment as written. They are:

1. The significantly lowered PEL may not be necessary, nor technologically or economically feasible at this time. Stakeholders and experts need to be consulted on changes, including consideration of progressively lowering the PEL, if appropriate.
2. In subparagraph (a) (2) of the amended Section 202, since only MSHA resources are involved in compliance sampling, the Department of Labor should make the

determinations as to sampling frequency. The Department will consult with HHS on sampling frequency.

3. Regarding subparagraph (a) (3), the frequency of sampling should be specified.
4. Regarding subparagraph (a) (4), the requirement to equip all miners is excessive. Other sampling strategies may exist that would protect all miners, but would not require each miner to be equipped with the device, e.g., sampling every miner on a rotational basis. Furthermore, it should be the responsibility of mine management to adjust work activities to prevent overexposure not the individual miner.
5. MSHA has included respirable crystalline silica on its regulatory agenda, and is considering several options.
6. Regarding paragraph (d) of the amended Section 202, MSHA recommends that the total material produced on each Mechanized Mining Unit (MMU) be added to the reporting requirements to allow MSHA to evaluate how representative compliance samples are of non-sampling shifts.

MSHA analysis of H.R. 2769, the Miner Health Enhancement Act of 2007

MSHA is opposed to H.R. 2769 for the following reasons:

Section 3, Air Contaminants: MSHA opposes this new provision for the following reasons:

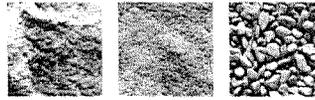
1. The rulemaking timetables are unrealistic;
2. MSHA and NIOSH need further discussion with respect to the feasibility and applicability of the Recommended Exposure Limits (RELs); and
3. The provision raises due process issues under Section 101 of the Mine Act concerning opportunity for notice and comment on MSHA's rulemaking.

Section 4, Asbestos: MSHA opposes this new provision because it is unnecessary. MSHA is currently in the process of issuing a final rule on Asbestos that adopts the OSHA PEL on asbestos. In addition, some of the requirements in the OSHA asbestos standard would not be appropriate to the mining environment.

Section 5, Hazard Communication: MSHA opposes this new provision. MSHA does not believe that reverting to the interim final rule is necessary. The interim final rule was challenged in the U.S. Court of Appeals for the District of Columbia Circuit and the rule was held in abeyance pending issuance of the final rule. The final rule was promulgated and was not contested; miners have been effectively protected under the final rule since 2002.



NATIONAL STONE, SAND & GRAVEL ASSOCIATION



Natural building blocks for quality of life



October 29, 2007

The Honorable George Miller
Chairman
House Education & Labor Committee
House of Representatives
2181 Rayburn H.O.B.
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Minority Member
House Education & Labor Committee
House of Representatives
2101 Rayburn H.O.B.
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

On behalf of the organizations listed below, this letter is to inform you of our opposition to HR 2769, the Miner Health Enhancement Act of 2007. As you are aware, the bill requires the National Institute of Occupational Safety and Health to forward all Recommended Exposure Limits (RELs) for air contaminants to the Secretary of Labor, who must then require the Mine Safety and Health Administration (MSHA) to adopt the RELs as permissible exposure limits, or PELs, as enforceable health standards. Because of these concerns, we urge you to vote against HR 2769.

In particular we have the following objections to HR 2769:

- The bill precludes public participation through notice and comment in the rulemaking process, which is the cornerstone for setting health and safety standards for protecting employees, and a key tenet of the Administrative Procedures Act.
- The bill ignores impacts on small businesses by not analyzing the impact of what amounts to a "significant" regulatory action as mandated by the Regulatory Flexibility Act.
- The bill thrusts NIOSH into a regulatory and policy-setting role that was never envisioned and for which NIOSH, a research agency, is not prepared. We agree with the statement of concern about this legislation voiced by the steelworkers union that many NIOSH RELs have been adopted without considering technological feasibility, but regulatory agencies recognize standards must both protect and be feasible.
- The bill removes the authority of the presidentially-appointed and Senate-confirmed Secretary of Labor as the prime decision-maker in promulgating workplace federal rules.

Passage of HR 2769 reverses decades of government operating in the sunshine – transparency that in these times is sorely needed for the credibility of the federal government, business and labor. All of these groups have relied on the longstanding and well-established process that mandates scientific research combined with technologic and economic feasibility when finalizing health and safety standards. We strongly urge you to vote against passage of HR 2769.

Sincerely,

American Road and Transportation Builders Association

Associated Builders and Contractors

Associated Equipment Distributors

Associated General Contractors

Association of Equipment Manufacturers

Industrial Minerals Association - North America

Mason Contractors Association of America

National Mining Association

National Stone, Sand & Gravel Association

cc: Members of the House Education & Labor Committee



October 29, 2007

The Honorable Howard McKeon
Ranking Minority Member
Committee on Education & Labor
U.S. House of Representatives
Washington, D.C. 20515

Subject: Mine Safety Legislation (HR 2768 and HR 2769)

Dear Representative McKeon:

The California Construction and Industrial Minerals Association (CalCIMA) represents over 100 producers of construction aggregates, industrial minerals, and ready mixed concrete in California. Our products supply materials for building California's infrastructure, homes, and buildings. As operators of surface mining operations and employers of thousands of workers throughout California, we also are concerned about maintaining the highest level of mine safety. We have reviewed HR 2768 and HR 2769 and offer our comments.

General observations

As a first step, we recommend the Committee on Education and Labor consider the suggestion presented in the American Society of Safety Engineers (ASSE) letter to the committee advising that an overall assessment of the industry's health and safety risks be conducted, rather than pursuing specific legislative changes at this time. An overall risk assessment would establish risk-based priorities to address the practices or sectors that are most in need of legislative reform. With the limited resources at the Mine Safety and Health Administration's (MSHA) disposal, legislative efforts addressing the highest priorities developed through an assessment would yield a more focused effort on improving safety in the areas where it is most needed. Currently, the proposed legislation is designed to punish the entire industry with increased regulations and penalties for the poor safety performance by a few mine operators. The assessment could be achieved by an entity independent of the current regulatory structure to provide an unbiased state of safety in the mining industry.

There are significant differences in many types and sizes of operations in the mining industry. An overall assessment would also be important to differentiate the appropriate safety approaches for each of these different sectors. While recent accidents are focused on coal and underground operations, most of the construction aggregate and industrial mineral sectors are surface mines. These operations have a risk-profile closer to heavy highway construction and an accident rate considerably lower than underground coal mines.

We also think it important to recognize that last year Congress passed The Miner Act, a major piece of legislation which is only in the initial stages of being implemented. Also, during the past two years, MSHA has initiated a number of changes in its procedures and enforcement. Taken as a whole, there have been many recent reforms in the regulatory framework for mine safety; consequently, further changes at this time may only complicate implementation of those initiatives for safety improvement.

We also believe it important to point out that California mines have dual regulation: both MSHA and the Division of Mining & Tunneling at CalOSHA separately enforce mine safety in California. In addition, California has its own processes, again through CalOSHA, to regulate workplace exposures. While this provides for dual enforcement, it also can provide unnecessary duplication or inconsistent standards. We ask that consideration be given to limiting potential duplicate or competing standards that would make mine safety and health protection more difficult in California.

If the Committee on Education and Labor decides to reject the suggestion to conduct an overall risk assessment at this time, we respectfully submit the following specific comments:

- **Pattern of Violations.** We believe this provision may not be necessary since MSHA already has a pattern of violation enforcement process and recently clarified it.
- **Failure to Timely Pay Penalty Assessments.** We recommend modifying this provision so a minor penalty does not result in the closure of a mine.
- **Penalties.** We recommend that current law be retained to allow for consideration of whether a penalty could impact a company's ability to remain in business. Also, we recommend that minimum and maximum penalties reflect the size of the operation, and that case-by-case analysis be retained at all levels of enforcement.
- **Accident Notification.** We recommend that closer review be given to the requirement that accidents be reported to MSHA within 15 minutes. There may be situations where this time frame may not be achievable given factors such as the number of personnel present or risk.

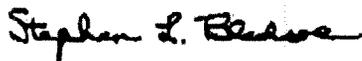
- **Respirable Dust Standards.** We would not recommend changes to respirable dust standards by legislation. These are matters of great detail that are better performed by regulatory agencies. CalOSHA currently has a thoughtful review process underway on several constituents.
- **Hazard Communication.** Rather than having the agency go back to a prior draft rule, it may be preferable to request that a new rule-making begin in order to incorporate recent standards and to allow for public and industry opinions to be heard on this topic.
- **Chemical Safety Board.** While it may make sense to have an independent agency provide unbiased assessment of accidents, it should be an agency dedicated to mining.

Conclusion

The bills include a number of good concepts, such as requiring post-accident communication systems, clear authority for MSHA to lead rescue and recovery efforts, and improved training for inspectors; however, we are concerned the legislation attempts many fixes without an overall strategy or consideration of the different types of mining in the United States. Because of this and the many recently implemented laws and regulatory changes regarding mine safety, we recommend again that the Education and Labor Committee first conduct an overall assessment of mine safety prior to making specific legislative changes.

We appreciate the opportunity to comment. Please let us know if we can be of assistance.

Sincerely,



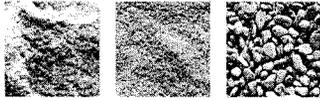
Steve Bledsoe
President



National Lime Association
L I M E
The Versatile Chemical



NATIONAL STONE, SAND & GRAVEL ASSOCIATION



Natural building blocks for quality of life

PCA
Portland Cement Association



October 29, 2007

The Honorable George Miller
Chairman
House Education & Labor Committee
House of Representatives
2181 Rayburn H.O.B.
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Minority Member
House Education & Labor Committee
House of Representatives
2101 Rayburn H.O.B.
Washington, DC 20515

Dear Chairman Miller & Ranking Member McKeon:

The House Education and Labor Committee is scheduled to mark up two bills of great concern to the mining industry -- the *Supplemental Mine Improvement and New Emergency Response Act* (H.R. 2768) and the *Miner Health Enhancement Act* (H.R. 2769). The undersigned organizations are writing to express our opposition to these measures which are premature and will interfere with our industries' on-going efforts to implement the requirements of the Mine Improvement and New Emergency Response (MINER) Act of 2006.

The members of our organizations place the safety and health of their workers as their highest priority. We have carefully reviewed the elements of these bills and have determined that they will harm, rather than enhance, our industries' diligent efforts to meet the requirements of the MINER Act which garnered overwhelming bi-partisan support and was endorsed by labor and industry prior to its passage last year. Unlike last year's bi-partisan bill, both measures:

- Add new regulatory requirements that will create confusion and threaten our continued progress in implementing the safety improvements required by the MINER Act;
- Circumvent notice and comment rulemaking, thereby thwarting the development of safety and health standards and policies based upon sound science;
- Change the roles and responsibilities of MSHA and NIOSH in a number of key respects; and



October 22, 2007

Hon. George Miller
Chairman
House Education and Labor Committee
Washington, DC 20515

RE: Supplemental Mine Improvement and New Emergency Response Act
of 2007 (H.R. 2768); Miner Health Enhancement Act of 2007 (H.R. 2769)

Dear Chairman Miller:

The Supplemental Mine Improvement and New Emergency Response Act (S-MINER) of 2007 (H.R. 2768) and The Miner Health Enhancement Act of 2007 (H.R. 2769) raise serious concerns for the nation's iron ore mines and their vendor enterprises. The mines and the hundreds of companies that sell their products and services to the mines are strongly committed to the safety and health of their workers. Safety is their highest priority and core value. To that end, the mines are actively implementing the compliance portions of the MINER Act of 2006 while participating in its rulemaking portion, all the while continuing their own programs of continuous improvement in miner health and safety.

The iron ore that is mined, processed into pellets and shipped to steel mills in the United States provides one of the essential raw resources for the nation's manufacturing and construction industries. The jobs and products they generate are a significant portion of Northeastern Minnesota's economy. Interruption of the production of this critical resource ripples throughout the entire economy of not only Minnesota but also the nation. The same iron ore is also one of the basic resources for the nation's security. Any governmental actions that could lead to such interruption must carry a heavy burden of merit and necessity. The members of IMA believe that the bills under consideration fall far short of this burden and that actions being taken toward their enactment should be suspended.

The Mine Improvement and New Emergency Response (MINER) Act was passed just last year and steady progress is being made in meeting its new requirements. That legislation was well considered in terms of the effects of its forthcoming rules and the reach of the agency's authority. It also made appropriate distinctions among different situations and settings within the mining sector. Imposing significant and premature changes to that legislation, prior to implementation of rules developed by experts, will weaken the overall process leading to sound mine safety regulations. Correcting

minor errors might be helpful but wholesale changes or additions to the legislation should not occur until the mines and regulatory agencies have had a chance to proactively implement rules based on last year's still-new enactment. It has been shown that the best way to assure safety is to create "buy-in" from all those involved. Allowing the current process to continue will assure that all stakeholders have input and buy-in.

In addition, the members of IMA wish to register their particular objection to those provisions of the pending bills that would establish mining health standards by legislative fiat. The enacting of health standards for respirable dust and the wholesale substitution of NIOSH RELs for MSHA PELs totally removes the strength and legitimacy that comes through the established regulatory process. That process is based on decades of statutory, executive and judicial dictates that, combined, serve to protect the rights of those being regulated and to promote good government, while pursuing the policy objectives set in legislation. Legislating highly technical and emotional issues is a grievous error. It sets the stage for future legislation that could destroy the entire robust system of studied rulemaking where experts from the government, union and industry are all involved. Only a process that allows experts to delineate facts and thoroughly understand the issue will lead to the soundest possible mining health standards. In contrast, a legislated substitute will lead inevitably to ill-considered and infeasible rules as well as multiply disenchantment, distrust and lack of certainty. Of all the aspects of the pending legislation, this is the most dangerous. We join many others in asking you to pull back from the idea of legislating rules and, instead, work with MSHA, OSHA and appropriate stakeholders toward improving the health standards process on a consensus basis.

Sincerely,



Craig Pagel
President, Iron Mining Association of Minnesota

The Iron Mining Association of Minnesota (IMA) mission is to promote an iron ore industry that will provide long-term growth and prosperity for all stakeholders through profitability in a competitive, global market. Our membership is made up of the six iron ore mines located in Northeast Minnesota as well as hundreds of vendors that supply their products and services to the mining industry. The companies that operate the mines include ArcelorMittal, Cleveland Cliffs and United States Steel Corporation. Iron mining contributes 1.6 billion dollars to the economy of Minnesota every year in the form of purchases, wages and benefits, taxes and royalties. The mines employ 4,000 men and women directly with an additional 14,000 employed by the vendors who provide products and services to the mines.