

Remarks of
Joseph A. Main, Assistant Secretary of Labor
for Mine Safety and Health
40th Annual West Virginia Mining Symposium
West Virginia Coal Association
Charleston, W Va
March 7, 2013

I appreciate the opportunity to be here today to discuss mine safety and health, and the actions MSHA, as well as the mining industry, has taken and is taking to improve it. During my administration, we have made several mine safety and health enforcement, regulatory, training and other changes, including improved stakeholder outreach and education. I believe these actions and initiatives, along with those by the mining industry, are making a positive difference overall and moving mine safety

and health in the right direction. I will share many of those with you today.

First, congratulations on the 40th year of your annual symposium.

This is also the 35th Anniversary of the 1977 Federal Mine Safety and Health Act. That legislation simply put – improved mine safety and health, reduced injuries and illnesses and saved lives.

That legislation transferred mine safety and health enforcement authority from the U S Department of Interior to the U S

Department of Labor, which is also celebrating its 100 year

anniversary this year, and combined the Federal Metal and

Nonmetallic Act of 1966 and the Federal Coal Mine Health and

Safety Act of 1969.

While metal and nonmetal miners gained the most under the 1977 Mine Act---including mandated inspections, twice a year at surface mines and four times a year at underground mines, as well as the stringent enforcement provisions contained in the 1969 Coal Mine Health and Safety Act---protections for all miners were increased. These included strengthened anti-discrimination provisions and, for the first time, the right of miners to request temporary reinstatements back to their job while their cases are pending, as well as requirements for training and retraining of miners.

The 1977 Act also provided protections against loss of pay for the time a miner's representative spends accompanying MSHA during a mine inspection, and compensation during periods when a mine is idled due to a withdrawal order.

The 1977 Act contained new rulemaking procedures that permitted the agency to promulgate emergency temporary standards. MSHA recently used this authority in September 2010 when, after the tragedy at the Upper Big Branch mine, it issued the “Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines” emergency temporary standard to prevent coal mine dust explosions

The Act also provided new enforcement tools for MSHA, including the authority to issue citations and orders for “unwarrantable failure” violations and the Pattern of Violations (POV) enhanced enforcement tool to address chronic violators; this POV tool, which we revised in 2010, was effectively used by MSHA for the first time in history in 2011 when mines were issued 104 closure orders for violations.

In addition, the 1977 Act placed increased emphasis on protecting the health of miners and also required the Secretary of Labor to propose a rule providing that mine rescue teams be available for each underground mine.

These provisions have made a significant difference in the lives of miners and their families– and still do.

The fatality and injury data best illustrate the positive impact of the 1977 Act. Prior to the 1977 Act, on average, one miner was killed and 66 were injured each day in mining accidents. In 1977, there were 273 mining fatalities in the U.S, 139 of which occurred in coal mines. In 2012, there were 35 fatalities, 19 were in coal.

In 1977, the total all-injury rate at all mines in the U.S. was 9.55 injuries per 200,000 work hours. For coal it was 12.90. By 2011, this number had fallen by 71 % to 2.73 injuries, and in coal, by 74% to 3.38 injuries. In 1977, the fatality rate was .0645, and .0720 in coal. By 2011, it was .0114, and .0156 in coal, decreases of 82% and 78% respectively.

When I arrived at MSHA in late 2009, my goal was to implement and enforce the nation's mine safety laws and to improve health and safety conditions in the nation's mines so miners can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift.

We had many challenges to address at MSHA at that time, including a significant loss of agency experience, leadership gaps and a backlog of about 80,000 contested citations and orders.

While we responded to those issues, we also began work to make other needed improvements, such as the “End Black Lung-Act Now” campaign, aimed at eradicating this coal workers’ disease and the “Rules to Live By” initiative, intended to prevent the most common mining deaths.

We also implemented a number of initiatives to increase stakeholder education and outreach, to have mine operator undertake greater responsibility to find and fix mining conditions at mines, to improve MSHA enforcement consistency and to give miners a greater voice in the workplace. In addition, MSHA took actions to improve training and mine emergency response. In looking back, I believe we have made progress in each of those areas, and some were significant.

The April 5, 2010 tragedy at the Upper Big Branch mine highlighted the need to improve mine safety. Investigations of that tragedy found a workplace culture that valued production over safety, hid conditions, encouraged non-compliance and prevented workers from speaking out about unsafe and unhealthy conditions. The tragedy caused us all to take a deeper look at the weaknesses in the safety net expected to protect the nation's miner, pointed out that the culture affecting mine safety and health had to change, and that MSHA needed to more aggressively use its tools under the Mine Act to enforce the law.

We began taking actions immediately: these activities included notices to the mining industry on its responsibility to comply with specific laws and regulations, our enhanced enforcement programs, such as our impact inspection and revised Pattern of Violations (POV) programs, and targeted rulemaking.

We implemented or began several organizational and administrative changes within MSHA. We split Coal District 4 into two districts in 2011, creating District 12, to better manage enforcement in southern West Virginia. Also, in 2011, we upgraded the Mt. Hope laboratory to a national lab so that MSHA can better manage coal dust and gas analyses.

In 2012, MSHA reorganized the Office of Assessments office to better manage and support our special enforcement programs, such as impact inspections, POV and scofflaws; investigation programs including miners' rights and 110 Mine Act investigations; and our enforcement auditing program.

In 2012, we also began work to reconsolidate our agency directives and policy guidance into one system and implemented

a pre-contest conferencing process to resolve citations before they become a matter for litigation. We have also created an agency-wide teleconferencing system to better communicate.

Just to give you an update on pre-contest conferencing and the backlog, which I spoke of earlier, preliminary numbers for 2012 show that over 3,400 violations have been conferenced.

In addition, the agency, along with the Solicitor of Labor is chipping away at its backlog of contested cases that existed when I first arrived at MSHA. The total backlog was reduced from a high of about 89,000 citations in January, 2011 to about 50,000 violations as of December 31, 2012. During this same period, MSHA resolved more than 100,000 violations.

When I arrived at MSHA, we were receiving a number of complaints about consistency in the application and enforcement of our standards. We immediately implemented new training for MSHA personnel, including field office supervisor training to occur every other year, regular refresher training for our inspectors and training with the FBI for our MSHA investigators.

In 2011, MSHA began providing quarterly information on deaths, including best practices to prevent them, to the mining industry and trainers. In addition, when we notice a particular hazard or trend, we notify the industry immediately. For example, we recently issued an alert and followed up with other actions, when 6 coal miners lost their lives within a 25 day period.

We have also changed how we roll out MSHA's initiatives to stakeholders by providing information before implementation, so

that everyone understands what we are working to accomplish. We are currently providing coal mining industry stakeholders information on our revised inspection handbook and rock dust inspection procedures due to go into effect in April.

We have expanded our working relationship through alliances with stakeholders, and with state mining agencies, particularly with the Interstate Mining Compact Commission.

We are continuing one of our key fatality prevention initiatives, the “Rules to Live By” program that we launched in January, 2010 to focus attention on the most common mining deaths and standards associated with them. If we are to prevent mining deaths, we must focus attention on the most common mining deaths and standards associated with them.

Another important tool for MSHA is its rulemaking authority. Since I have been Assistant Secretary, MSHA has taken a targeted approach to rulemaking focusing our efforts on those rules that will have the biggest impact on miner safety and health. On June 21, 2011, the emergency temporary standard we had implemented in 2010 on rock dust, became a final rule.

Also, on April 6, 2012 MSHA published the final rule on “Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards” requiring mine operators to conduct more thorough examinations to find and fix specific conditions that MSHA was commonly citing and are consistent with the standards emphasized in MSHA's "Rules to Live By" initiative. This rule was necessary to improve conditions in underground coal mines. As our April 2012 announcement noted, in 2010, MSHA cited approximately 173,000

violations, of which approximately 80,000 were attributable to underground coal mines, even though these mines represent just 4 percent of all mines.

Most recently, on January 23, 2013, MSHA issued a final rule on the POV enforcement tool, aligning the rule with the original intent of Congress to rein in chronic violators. We have updated our POV web tool that allows mine operators to track compliance and prevent POV actions by implementing safety and health measures.

We believe that all these collective actions and initiatives are improving mine safety and health in the nation's mines, are reducing injuries, illnesses and deaths, and improving compliance. Let me share some of the results starting with some of our key enforcement initiatives.

MSHA has conducted 565 impact inspections and issued over 9,800 citations, more than 900 orders and 40 safeguards since the program began in April, 2010 through January, 2012. Those new strategic inspections targeted mines that merit increased agency attention and focus due to their poor compliance history or other particular concerns.

A review of mines that received impact inspections between September, 2010 and September, 2012, shows that these impact inspections are making a real difference. As of December 31, 2012, violations per inspection hour were down 16%, S&S violations down 21%, unwarrantable failures down 50% and lost time injury rates, down 10%.

However, we are unfortunately still seeing some mines that fail to address recurring problems that put miners at risk such as those highlighted in the monthly impact inspection announcements.

As I said previously, MSHA has revised the POV process, and has been using the POV enforcement tool provided by the 1977 Act to more aggressively deal with chronic violators.

In our first year screening following those revisions in 2010, fifty-three mines were identified and 17 mines received Proposed Pattern of Violation (PPOV) notices as a result. By October 2012, during the third screening, 20 mines were identified and thus far only 4 mines received PPOV notices, showing a significant reduction using the same measuring stick.

MSHA has also reviewed the violation and injury records of the 19 coal mines and 3 metal/nonmetal mines that received PPOV notices and have had at least one complete inspection since undergoing the PPOV process. As of December 31, 2012, the total violation rate among these mines was down 34 percent; the total S&S violation rate down 56 percent; the rate of unwarrantable failure violations down 80 percent; and the lost time injury rate down 39 percent.

When I arrived at MSHA we began to pay more attention to the enforcement of the anti-discrimination provisions contained in the 1977 Act. This was reinforced by the tragedy at the Upper Big Branch mine. For the four years prior to the disaster, no one working at UBB had filed a hazard complaint, even though post-disaster investigations documented long-standing problems at that mine.

MSHA has distributed materials directly to miners and has beefed up its special investigations staff to work on claims of retaliation. In 2011, MSHA updated its Miners' Rights Handbook and developed new training tools, which are available online. In 2012, the Agency, working with the Department of Labor, filed 46 temporary reinstatement (TR) requests and 34 105(c) discrimination cases on behalf of miners, the most ever in a year, according to MSHA records.

In December, 2009, we launched the "End Black Lung – ACT NOW" campaign, a comprehensive strategy to end black lung disease involving targeted outreach, education and training, rulemaking, focused enforcement and collaboration with stakeholders. In FY2012, both MSHA and operator Designated Occupation sample results recorded the lowest yearly average

respirable dust concentration ever in underground coal mines at 0.71 mg/m³.

The data also shows a 14% reduction since we began the End Black Lung---ACT NOW program through FY2012.

While all these improvements have occurred, the most important are those affecting the miners that return home each day to their families and free of injury or illness. In 2011, the total all-injury rates at all mines in the U.S. was 2.73 injuries per 200,000 work hours the lowest ever recorded in mining. In 2011, the fatality rate was .0114 -the lowest ever recorded in mining history. The all-injury rate for coal it was 3.38, and the fatal rate was .0156 for 2011.

As we have announced, preliminary numbers for 2012 show that these fatality rates have decreased even further, with 2012 the safest year on record in the mining industry.

As low as fatalities have come in recent years, we all know that one death is one too many and that they are preventable, and more needs to be done to protect our nation's miners.

We were all quickly reminded of that recently when 6 coal miners lost their lives within a 25 day period between January 26th and February 19th of this year. Four of those deaths occurred in coal mines here in West Virginia. MSHA acted immediately to alert the mining community, and MSHA personnel, along with staff from the West Virginia Office of Miners' Health, Safety and Training, has traveled this state to alert miners, miners' representatives, supervisors and operators of this development

and distribute detailed information to them about these fatalities and the ways to prevent them. MSHA is also looking harder at mines with compliance issues and particular safety and health problems.

To date, eight miners, including two in metal and nonmetal, have lost their lives this year in mining accidents. We must continue to do whatever we can to prevent deaths and injuries.

The use of proximity detection systems on mining machines in underground coal mines is among the best practices to prevent crushing injuries and deaths.

While rulemaking on the use of proximity detection systems is underway, mine operators should be implementing proximity detectors to protect miners. A number of mine operators are

already doing that. Based on information obtained by MSHA's Technical Support branch, over 250 underground machines are equipped with proximity detection systems. Alliance Resources and Consol Energy are among those companies leading the way.

Having been involved in many mine emergency response on site during my mining career, I know first-hand that sustainable improvements are needed to assure we, as a mining community, are ready for any mining emergency that may come our way. I have held a number of summits and events to both discuss the needs and plan going forward. While we are making progress in this area by developing state of the art technologies, increasing mine emergency response training and improving command and control preparedness, more needs done.

As a result, we are also working to develop an organized structure for mine rescue guidance, coordination of mine rescue team contest/training and long term support through the Joseph A. Holmes Association, the original structure developed in the early 1900's for that purpose.

As I have said on a number of occasions, the United States should be the leader in development of mine safety and health technologies. I believe that my agency, along with the industry should help lead the way. There are new opportunities to achieve that goal. We are interested in the work of the Alpha Foundation for the Improvement of Mine Safety and Health that Alpha Natural Resources created as part of its settlement with the U.S. Attorney for the Southern District of West Virginia. That settlement also established certain research and testing to be conducted by Alpha Natural Resources to utilize state of the art

mine safety equipment---such as atmospheric monitoring and cascading oxygen systems, as well as the coal dust explosibility meter (CDEM), a tool used to determine the explosibility of coal dust.

As required by the MINER Act, all underground coal mines have communication and tracking systems in their mines, and the U.S. is leading the way in developing the next generation of these systems. Consol Energy is helping develop through-the-earth audible communications, and mine operators are installing atmospheric monitoring system solutions that can leverage communication and tracking systems for data transmission.

While we have made progress and are moving mine safety and health in the right direction, there is still much more to be done to provide miners the opportunity to go to work, put in their shift

and return home safe and healthy each day. That is our mission and that is our goal. Together we can make that happen. We owe the nation's miners that much.

Improving mine safety and health is of great importance to President Obama, Acting Secretary of Labor Seth Harris, myself--- and I am sure---everyone here today. The President has articulated a forward-looking vision of a thriving middle class and a strong economy, which include safe and healthy workplaces, particularly in high risk industries, and a voice in the workplace for workers. The President's plan would create jobs and help businesses by fixing the roads, bridges and other infrastructure most in need of repair first.

Going forward, and despite the sequestration, which has placed budgetary constraints on the agency, we will continue to focus

on our mission to prevent death, disease and injury and to promote safe and healthy workplaces for all miners.