



Testimony of
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Thank you Mr. Chairman, Ranking Member Wilson and members of the Subcommittee. I am Bruce Watzman, Senior Vice President of the National Mining Association (NMA). We appreciate this opportunity to testify and share our views on the impediments to improved safety performance in the U.S. mining industry.

As we have testified before, in 2007 NMA initiated an effort to examine the barriers to improved safety performance and to disseminate best-practice materials across the industry. This effort began with an examination of the industry's safety performance. While most people would agree that notable progress has been made over the last two decades to keep miners safe, the industry has not reached its goal of zero fatalities and injuries -- so more work needs to be done.

Our effort stemmed from one fact above all others: the current pace of safety performance was not acceptable. As a result, in 2011 NMA initiated an effort, **CORESafety**[®] a first-of-its-kind safety and health management system designed specifically for U.S. mining to complement what has been accomplished and to challenge the industry to take a more aggressive approach to modernize and improve safety performance. At the heart of **CORESafety** is fatality prevention and risk management. It is an ambitious new way of addressing safety concerns. **CORESafety** is not about saving miners after accidents. It is about identifying at-risk conditions, practices and behaviors that habitually lead to accidents in order to prevent them and its making a difference.

In developing **CORESafety** we studied the safety practices of companies and industries that have exemplary safety performance. Successful safety systems all have certain common elements. They are integrated into an effective management system, are supported and driven by senior management; involve their employees in the safety process; are reinforced by the organization's culture, and in return, support the culture. In our estimation these are the elements necessary to modernize health and safety in the U.S. mining industry. They are the elements of a new mine safety paradigm that we believe is needed to help us reach the higher plateau of safety performance I spoke of earlier.

I'm most pleased to report that several organizations including the Society of Mining, Metallurgy and Exploration, the Mining Practices Group of the American Society of Safety Engineers, World Coal Association and the International Safety Quality Management Association, have either endorsed or recognized through leadership awards **CORE**Safety as a cutting-edge approach for improving safety performance.

Today exemplary safety performers view adherence with regulatory requirements as the starting point, not as the finish line. They acknowledge the necessity of enforcement, but they also recognize the limitation of enforcement as a means to improve performance. While compliance with the law is required and important, this in and of itself will not improve safety performance. We have come to understand that the correlation between compliance and safety performance is not as strong as some believe.

To be effective, a safety system should be specifically designed to meet the unique needs of an organization. The design must consider the organization's culture, and its workforce. When designing a performance-based safety system it is important to remember that "one size does not fit all." The system must be proactive rather than reactive. It must be designed to help companies identify and address potential hazards to prevent them from evolving into situations that place miners in harm's way.

In this respect a proactive approach has advantages over proscriptive regulatory requirements that can inhibit the ability of companies to respond to health and safety issues in a timely and effective way. Often, the time spent dealing with bureaucratic requirements steals precious time that could be spent eliminating a barrier to safe performance. Enforcement is an important safety tool, but its ability to improve performance is limited. There are more effective ways to improve safety performance. Working with their employees NMA members have made significant progress since enactment of the Mine Act in 1969, acting within the enforcement regime that the Congress created. But, having worked under the Mine Act for the past 46 years the question that must be asked is, if enforcement alone is the solution, shouldn't the performance be better than it already is?

One key thing we have come to realize is that risk-based safety and health management systems are more likely to move safety performance to the next level. Experience shows that “safe behavior” does not occur in a vacuum, it is shaped by leadership and culture. These are characteristics that are taught and nurtured, not legislated.

If we are to break through the barriers to continuous performance improvement we must recognize the role of culture and behavior – not to punish individuals but to help them improve their work practices, to avoid creating situations that place themselves or fellow workers in dangerous situations. In this regard I am reminded of a comment offered by Mike Wright Director, Health, and Safety & Environment for the United Steel Workers. In 2011 testimony at a Mine Safety and Health Administration public meeting on safety and health management “programs” he stated:

“Mostly we regulate safety and health through a rulebook. Since 1980, we’ve been collecting data on all fatalities that happen in the union. God help us, we’ve had more than 1,000. Not just in mining, but in all industries in the U.S. and Canada. In 2006 we took a random sample of those cases and analyzed them and asked a couple of questions: ‘Was this fatality the direct result of a violation of an MSHA/OSHA or equivalent Canadian standard?’ Astoundingly, in just about half the cases, the answer was no.”

What does this tell us? That more of the same will drive performance improvement or that we need to modify how we think about and approach safety? What is required is to foster a culture of safety and prevention across the industry. In our view the strategies for improving performance must change. Last year 86 percent of the mines in our industry worked the entire year without a lost-time-accident. Enforcement contributed to this safety record but this did not occur solely as a result of MSHA’s enforcement activities. However, while somewhat counter-intuitive, the rate of lost-time injuries may not be the most appropriate metric for us to discuss improvements in safety. A better question is: “What was the level of operational risk in each mine in the U.S. in 2015”? A mine can be in

compliance with MSHA regulations, as they are written, and still be at risk of a fatality. Only a more robust and consistent focus on risk will enable our country to answer that question, but that will not be possible with the current regulatory structure.

Mine operators who improve their safety performance year-after-year recognize the need to go beyond mere conformity with the law. They understand that regulations alone are not sufficient to drive continued improvement. It is time for all of us to recognize that culture, leadership, training and other organizational-behavioral factors significantly influence performance. To the extent operators fall short, regulators provide miners with a needed safety net but MSHA's actions will not result in zero fatalities.

Beyond what the industry is doing voluntarily we are long past the time of debating the need for MSHA to modernize and modify the manner in which it conducts business. Despite what some believe, impact inspections, Rules-to-Live-By and Pattern of Violations will not get us to zero fatalities. MSHA's enforcement initiatives, by focusing on conditions, represents a reactive approach to safety management that has had, and will continue to have, limited success.

We are not alone in making this observation. While the U.S. is a leader in many aspects of mining and mining technology there are others countries with better safety performance. In fact, if you examine the mine safety regulatory structure in all developing and developed mining countries worldwide, only one country, the U.S., continues to focus almost exclusively on a hazard-centered approach. Others have turned the corner and are focusing on risk-centered management systems as their primary focus.

We have an opportunity to drive further improvement but not in the enforcement environment that exists today. Today the mining industry is undergoing fundamental change but the agency remains wedded to a model with diminishing return. From 2010 through the end of 2014 the number of operating mines declined 18 percent yet during this period MSHA's budget, including this year's request, has increased 12 percent.

The reduced number of operating mines provides an opportunity to re-evaluate how MSHA allocates its resources and how the resources are applied. MSHA remains affixed to a model where today it is not uncommon for 4, 5 or 6 federal inspectors to be on-site every day. Not only is this unnecessary, it is counter-productive. Once on-site MSHA's presence requires operators to commit scarce resources to accompany inspectors during their compliance activities and let's be clear, compliance and safety are not synonymous.

As one might expect, enforcement leads to adjudication and this is a second area in need of reform. The adversarial adjudicatory system in place today serves no one's interests. Valuable resources are needlessly tied-up challenging unwarranted citations that are routinely lowered. What we find today however is that while the government's counsel will reduce the severity of a citation, because the citations were in error, they refuse to reduce the accompanying penalty. There is no basis for this as severity; gravity and negligence are all factors that, under the Part 100 regulations, are considerations in arriving at a penalty amount. Reducing one should result in a concurrent reduction in the other but the government's take-it-or-leave-it approach places operators in an untenable situation that again draws resources to non-safety-related activities. Regardless of the outcome of the penalty amount, operators must immediately abate the cited condition even though they often prove later to have no merit after time-consuming and expensive challenges.

Of equal importance is a citation conference process that remains broken. The unwillingness of supervisors to overturn erroneous citations results in both government and operator resources being fettered away needlessly. We have raised this issue repeatedly but unfortunately MSHA appears unwilling to address the root cause of this problem.

Another area in need of review is MSHA's selective recognition and incorporation of new technology. The Mine Improvement and New Emergency Response Act of 2006 (MINER Act) established within the National Institute for Occupational Safety and Health an Office of Mine Safety and Health to be administered by an Associate Director. The Office

is “responsible for research, development and testing of new technologies and equipment designed to enhance mine safety and health.” While MSHA is not bound by NIOSH’s work, the long-standing relationship of the two agencies has evolved into NIOSH becoming the technical advisor for MSHA. In this regard we are concerned that MSHA is, in some instances, prematurely promulgating regulations that impose technology requirements while in other instances they are denying operators the right to use proven technology even in the face of judicial decisions requiring them to do so.

Two examples illustrate this problem. On Sept. 15 MSHA issued a proposed rule to require operators of underground coal mine to equip certain pieces of equipment with what is known as proximity detection technology. While proximity technology was proven on an earlier category of equipment, the technology is not seamlessly transferable to the latest category of equipment contemplated by the proposed rule. One example: the technology has intermittent electrical interference that affects performance. More importantly, NIOSH has not yet begun any research on the classification of equipment in the proposed rule. Contrast that with the earlier equipment proximity rule where literally hundreds of pieces of equipment were equipped and tested by industry, equipment manufacturers and NIOSH research. This established a learning opportunity before a regulation was written.

MSHA’s proposed rule will require the wholesale application of technology where practically every application is unique and most are still untested. Furthermore, the structure of the proposed rule has created a huge disincentive for operators to apply the technology ahead of the rule. This creates a barrier to further development of the technology.

Despite this and despite the fact that NIOSH has not tested the technology MSHA’s proposal would impose unrealistic deadlines for operators to install and implement the technology and would punish early adapters by imposing harsh deadlines for system upgrades. This is neither warranted nor justified.

A second example involves the use of surveying equipment. Electronic surveying instruments became the standard for surveying starting in the 1980's. Acceptable mechanical surveying instruments are not manufactured any longer. There are no "permissible" electronic surveying instruments and thus the instruments cannot be used in underground coal mines in the locations where permissible electric equipment is required but where accurate surveying is critical. Operators are required to use obsolete equipment rather than equipment that is 8-10 times more accurate. Operators have petitioned under Section 101(c) of the Act to use electronic surveying equipment in lieu of permissible equipment under certain rather stringent conditions. MSHA denied those requests and Department of Labor Administrative Law Judges heard appeals of those denials and granted the petitions with some additional conditions. On appeal by MSHA the Assistant Secretary rejected the thoughtful decisions of the ALJs and imposed additional conditions that virtually preclude effective use of the electronic surveying instruments which provide an additional layer of protection for miners.

Similarly we continue to face problems relative to the new technology required by MSHA's final coal dust rule. The inability to differentiate between rock dust and coal dust particles gives rise to a conflict between this rule and the agency's enhanced rock dusting requirements. Additionally, the difference in sample concentration determinations using the current sampler and the new sampler continues to raise concerns for the industry, especially as the date for implementation of the 2nd phase of the final rule is looming.

These examples illustrate the many faces of MSHA with regard to new technology. On the one hand imposing requirements in advance of research and testing to ensure that the technology will work across many applications while on the other denying operators the right the use proven technology that will enhance miner safety.

Finally, it is time for MSHA to adopt a program for mine safety modeled on the very successful Voluntary Protection Program (VPP) administered by the MSHA's sister agency the Occupational Safety and Health

Administration (OSHA). The VPP allows those employers who meet stringent performance-based health and safety criteria to be removed from programmed inspection lists and OSHA will not issue citations for standards violations that are promptly corrected so long as the worksite continues to exceed the VPP standards. The VPP promotes a cooperative approach to workplace safety. Employee support and involvement is a prerequisite for acceptance into the VPP. Depending on which statistics you cite, companies who participate in the VPP program have safety performance that is 40-65 percent better than companies that do not participate.

Some will take this to mean that we are advocating an end to what is not commonly referred to as the 4's and 2's – the statutory requirement for inspections at all underground and surface mines. Let me be clear, we are not calling for an end to required inspections, rather VPP is a mechanism for MSHA to shift their focus at recognized mines from an enforcement to a compliance assistance approach. Just as in the case for OSHA regulated VPP facilities MSHA should shift its resources and focus to higher-risk worksites. This will become an increasingly important consideration as MSHA is compelled to render resource allocation decisions in a time of budgetary limitations.

VPP does not relieve an employer from complying with all applicable federal regulatory requirements. All compliance standards and worksites remain subject to inspections generated by complaints, accidents or other significant events. Because VPP participants develop and implement systems to prevent employee injuries and illnesses, the average VPP worksite has a lost workday incidence rate at least 50 percent below the average for its industry. MSHA can and should do the same.

In closing let me stress that to modernize and improve safety performance, we need to move beyond a model based strictly on enforcement. Enforcement is necessary, particularly with regard to “bad actors,” but to truly modernize mine safety we have to develop a performance structure based on a risk-based approach that establishes higher standards, engages employees, and encourages cooperation. **CORE**Safety and the

VPP process are positive steps that would move the industry in that direction.