

# United Mine Workers of America



TELEPHONE  
(703) 208-7200

UNITED MINE WORKERS' HEADQUARTERS  
8315 LEE HIGHWAY

**Fairfax, VA**

22031-2215



June 19, 2009

Mr. Timothy Rehak  
Center for Disease Control  
P.O. Box 18070  
626 Cochrans Mill Road  
Pittsburgh, PA 15236

Dear Mr. Rehak:

As indicated in the comments submitted today by the United Mine Workers of America on RIN:0920-AA10; Approval Test and Standards for Closed-Circuit Escape Respirators, we are sending copies of the attachments referenced in our comments under separate cover by mail. The documents were too large to be transmitted electronically via e-mail. Please include these attachments as part of the record with our comments submitted by e-mail on June 19, 2009 on this proposed rule.

I thank you in advance for your cooperation in this matter.

Sincerely,

Dennis O'Dell, Administrator  
Department of Occupational  
Health and Safety

**Comments of the United Mine Workers of America  
On the Notice of Proposed Rulemaking:  
Approved Tests and Standards for Closed-Circuit Escape Respirators  
73 FR 75027-45, (December 10, 2008)**

**ATTACHMENTS**

The following documents were referenced throughout comments of the United Mine Workers of America:

- (1) An Act Federal Mine Safety and Health Act of 1977; Public Law 91-173 as amended by Public Law 95-164 and Mine Improvement and New Emergency Response Act of 2006 (MINER Act) ; Public Law 109-236 (S2803)
- (2) The United Mine Workers of America, AFL-CIO/CLC Report on the Sago Mine Disaster of January 2, 2006.
- (3) United Mine Workers of America Testimony of Cecil Roberts before the U.S. Senate Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Wednesday, February 28, 2007 Hearing Room 124 Dirksen Senate Office Building Washington, DC.
- (4) Cecil E. Roberts, International President United Mine Workers of America Testimony before the United States House of Representatives Committee on Education and Labor Wednesday, March 28, 2007 Rayburn House Office Building Room 2175 Washington, DC.
- (5) Cecil E. Roberts, President United Mine Workers of America, International Union Testimony before the U.S. Senate Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies; Wednesday, September 5, 2007 Hearing Room SD-124 Dirksen Senate Office Building, Washington, DC.
- (6) Comments of the United Mine Workers of America regarding the Emergency Mine Evacuation Emergency Temporary Standard published in the Federal Register Volume 71, Number 46 on March 9, 2006.

**United Mine Workers of America  
Testimony of Cecil Roberts  
before the  
U.S. Senate Appropriations Subcommittee on  
Labor, Health and Human Services, Education and Related Agencies**

**Wednesday, February 28, 2007  
Hearing Room 124  
Dirksen Senate Office Building  
Washington, D.C.**

**IMPROVING MINE SAFETY: ONE YEAR AFTER SAGO AND ALMA**

Thank you for allowing me this opportunity to appear before your Committee. As President of the United Mine Workers of America (“UMWA”), I represent the union that, for 117 years, has been an unwavering advocate for miners’ health and safety.

This entire Committee has played a significant role in advancing miners’ health and safety. I would like to express my appreciation to the leadership of this Committee for your efforts to protect the health and safety of all miners. Your continued oversight is critical to ensuring miners will go home safely at the end of their shift.

One year ago I testified about miners’ health and safety shortly after the Sago and Alma disasters; even after those two dramatic tragedies occurred, 32 more coal miners were killed in 2006.

Following the Sago and Alma disasters and after five more miners were killed on May 20, 2006 at the Darby Mine in Kentucky, Congress moved to enact the MINER Act. That law includes several important provisions aimed at helping miners *after* a mine emergency develops. It is most appropriate for you to consider whether the improvements Congress intended to accomplish through the MINER Act are being realized. The Union supports MSHA’s efforts to require substantially more oxygen for every miner. The emergency mine evacuation rule also contains a number of important improvements. Having said that, my testimony will focus attention on areas that MSHA needs to dedicate additional resources to

fully implement the MINER Act.

Some of the inadequacies in implementing the MINER Act may be linked to insufficient resources. However, others can be tracked to decisions made by the Agency. In 2001, then Assistant Secretary for Mine Health and Safety, David Lauriski told members of the National Mining Association that MSHA would, “collaborate more with mine operators on regulatory initiatives” and become “less confrontational with mine operators, in an effort to provide companies with better compliance assistance.” At a meeting with mine operators in Hindman, Kentucky, he bragged about his diminutive regulatory agenda. He noted, “if you’ve seen it you noticed its quite a bit shorter than some past agendas.” These policy statements were accompanied by a withdrawal of many proposed regulations by MSHA and a noticeable shift to compliance assistance. These compliance assistance programs divert precious resources away from enforcement. Perhaps most tragically, in many cases, MSHA has ignored the mandate of Congress by adopting regulations and policies that place miners at greater risk.

### **Mine Inspectors / Mine Inspections**

The Agency is experiencing great difficulty in fulfilling the mandatory inspections required under the Mine Act. The Union is convinced that the hiring and training of more MSHA inspectors must be a top and continuing priority. The Agency must have a full complement of properly trained personnel if it is to perform its primary job of enforcing the Mine Act. The ranks of the inspectors have been diminished over the years and we can expect further reductions as more of MSHA’s long-time inspectors leave the profession as they reach retirement age. These needs can only be filled by hiring qualified individuals from all segments of the industry, including rank and file miners. These new inspectors must also be outfitted with state of the art equipment for personal protection and to perform their inspection duties. Sufficient monies must be allocated to ensure this equipment is readily available to these inspectors.

As the number of inspectors have decreased, MSHA’s field office specialists, including ventilation specialists and its electrical and roof control support staff, have been forced to carry out routine mine inspections. These specialists must be returned to their areas of expertise. The only way to accomplish this is to hire an adequate number of inspectors which will permit the

specialists to focus on the job they are trained to do. In addition, the Agency must move immediately to train a sufficient number of inspectors to perform these technical tasks in the future.

I would like to thank Senator Byrd and the other members of the Committee who worked to secure 25.6 million dollars to hire an additional 170 mine inspectors and your continuing efforts to secure future funding. Congress must ensure that funding levels at the Mine Academy in Beckley, WV remain sufficient to meet future training needs for mine inspectors. This facility is used to train mine inspectors and also offers comprehensive training for miners and other health and safety experts.

## **Seals**

In 1969 and again in 1977 Congress mandated that “explosion proof seals or bulkheads” be used to isolate abandoned or worked out areas of the mine from active workings. However, in the years since, MSHA has promulgated regulations regarding seals that are much less protective than what Congress mandated. The current regulation simply requires that seals withstand static pressure of 20 pounds per square inch (psi) in order to be approved for installation in the mine. The standard was further eroded when MSHA approved the use of Omega Block type seals, such as those that were used at Sago. These Omega Block seals catastrophically failed as a result of the explosion at Sago and contributed to the deaths of all twelve miners.

The UMWA urges MSHA to promulgate a regulation that would require the construction of seals that meet the mandates of Congress and the recommendations in NIOSH’s draft report on mine seals.

## **Regulations**

The UMWA believes that MSHA should adopt an aggressive regulatory agenda to address important issues in addition to those contained in the MINER Act, including:

1. Improved Atmospheric Monitoring Systems
2. Develop a Nationwide Emergency Communication System

3. Revise MSHA's Approval and Certification Process for Equipment Approval
4. Occupational Exposure to Coal Mine Dust (lowering exposure limits)
5. Collection of Civil Penalties (mandatory mine closures for non-payment)
6. Air Quality Chemical Substances and Respiratory Protection Standards (update personal exposure limits)
7. Surface Haulage (truck, haul road, train and loadout safety)
8. Respirable Crystalline Silica Standard (reducing quartz standard)
9. Requirements for Approval of Flame Resistant Conveyor Belts
10. Confined Spaces (tight quartered work areas)
11. Training and Retraining of Miners (revision of Part 48)
12. Surge and Storage Piles (dozer/feeder safety surface)
13. Escapeways and Refuges
14. Accident Investigation Hearing Procedures (make them public)
15. Verification of Surface Coal Mine Dust Control Plans
16. Continuous Monitoring of Respirable Coal Mine Dust in Underground Coal Mines
17. Modify Conferencing Process (Appeals of Citations)
18. Underground Coal Mining, Self-Contained Self-Rescuer Service Life Approval and Training.

### **Recording Fatal Accidents**

Just last week MSHA issued new guidelines for determining what constitutes a mine related fatality. The "Fatal Injury Guideline Matrix" narrows the scope of what the Agency will define as a fatal accident chargeable to the mine operator. This will allow the Agency to report numbers that are artificially low and possibly skew the actual health and safety record of the mine and the industry. In addition, fatalities not listed as mine-related will not get the same scrutiny as a chargeable accident. Without the formal investigation process, lessons learned will not be available to prevent similar events in the future.

The Union also disagrees with the Committee established by the Agency to review deaths where chargeability is in question. The Committee is made up of upper-level MSHA employees and not open to other agencies, organizations or the public. This type of structure does not lend itself to a fair, unbiased review of the

situation.

## **Implementation of the MINER Act**

In the MINER Act, Congress mandated timelines for its implementation. In some cases, MSHA has failed to meet these deadlines. The Union urges Congress to allocate adequate funding to MSHA so it can fully implement this Act within the timeframes set by Congress.

The *Emergency Mine Evacuation Rule*, which is separate from the MINER Act but ties into the self-contained self-rescuers (SCSRs) requirements, was finalized and made effective December 8, 2006. However, miners working underground today do not have all the protections that Rule addresses. MSHA deems the operator to be in compliance with the Rule if it has placed an order for additional SCSRs. Although the Rule requires increased availability and storage of SCSRs, there is a backlog of orders for these life-sustaining units. While the Union is extremely frustrated that more than a year after the Sago and Alma disasters, many miners only have one additional hour of oxygen, in light of this backlog, the Union supports MSHA's approach to make the additional oxygen units equally available to all miners. In reality, it will still take a number of years before miners receive the protections mandated by Congress. Miners cannot wait for another mine disaster to occur to drive new technology, therefore, the Union strongly urges the development and approval of the next generation SCSR.

The Rule also requires "expectations" training on SCSRs. This would allow miners to experience the actual effects of donning a unit and attempting an escape. The practice units would allow miners to experience the breathing restriction and heating that SCSRs create, without risking their safety. While MSHA claims these practice units are not available for purchase, they are in fact available. The reason these devices are not being used by miners today is not availability, it is cost. Many mine operators simply do not want to spend the money to buy them. This is unacceptable and while we commend MSHA for promulgating a rule that is intended to be "technology-driven," it must now enforce that rule.

Moreover, the finality of this emergency response and evacuation rule is somewhat uncertain as the National Mining Association (NMA) filed a court



challenge. The Union is not certain which aspects of the rule NMA is contesting, but it is certain that such legal maneuvers delays the protections Congress mandated only last year.

Congress understood the importance of requiring that mine operators have comprehensive emergency response plans at all their operations. The MINER Act permitted operators a 60 day period to prepare these plans and submit them to the Agency for review and approval. However, many of the mine emergency response plans that operators submitted were grossly inadequate, and not worthy of approval. We are now over six months beyond the deadline established by Congress. While we commend MSHA for not approving these faulty plans, we do believe it must be more aggressive and apply more pressure on the operators to get these plans completed. Unless MSHA takes decisive action and resolves all the remaining issues, miners will not get the mine emergency response improvements that Congress intended.

Further, the mine emergency response plans are to be reviewed and re-approved by MSHA every six months. We are already six months beyond the original plan due date. If those first plans are not yet approved and fully implemented, how can we expect MSHA to handle these semi-annual reviews? Perhaps MSHA needs more manpower to handle this task, but whatever the answer, until every operation has an approved plan in place, miners are not getting the protections Congress intended.

Very little has changed in the last year concerning the ability to communicate with and locate trapped miners. While we have learned more about this technology and understand that much is available, very few operators have taken advantage of it. Communication systems and tracking devices are areas that MSHA must pursue more aggressively. Current communication and tracking technology, including one-way text messaging and two-way wireless systems, some of which are available now, must be immediately installed in all mines. Any system that can increase the ability for miners to escape a mine emergency, even if it is limited in scope, must be utilized. The federal government, through NIOSH and MSHA, must fund and direct continued studies and research to develop the next generation of tracking and communication devices. As this newer technology becomes available, mine operators must be required to upgrade existing systems at all its operations.



We are also troubled by MSHA's failure to undertake action to facilitate the creation and training of additional mine rescue teams. Congress in the MINER Act clearly outlined its intent regarding the need for additional mine rescue teams. In addition, the language clearly defines how this is to be applied at both large and small mines. While Congress allowed MSHA 18 months in which to prepare, finalize, and give effect to rules that increase and enhance mine rescue team requirements, so far MSHA has not addressed this need. The need is real, and it is immediate. In the not-too-distant future MSHA will need additional funding to certify that mine rescue teams are qualified, as contemplated by the MINER Act.

Over the past 20 years MSHA and some operators have weakened the intent of the current regulations regarding mine rescue protections. The existing mine rescue team structure is spread too thin. It takes a lot of time and much practice for any mine rescue team to function well. The UMWA has training facilities and is willing to provide mine rescue training and first responder training if we receive the necessary funding. Miners cannot afford to wait any longer for the training of new teams to begin.

### **Collection of Civil Penalties**

In the MINER Act, Congress charged MSHA with revising and enhancing its penalty structure. MSHA proposed a revised schedule, but it is not yet final, so it is difficult for us to comment about whether it will induce any better compliance by operators.

However, even without a new fine structure, the Agency needs to do a better job of tracking and collecting the fines it imposes, and it should escalate the pressure when an operator refuses to pay a final penalty. Last year MSHA blamed computer problems on its inability to track fines. We understand that it still faces some technological challenges. If that is the case, then MSHA needs to fix the problem. When fines go unpaid it not only gives an unfair competitive advantage to the delinquent operator, but that operator's disregard for the mine health and safety laws and regulations imposes excessive risk on its employees.

To the extent that MSHA takes the position that it cannot close an operation for having substantial unpaid fines, we submit that Congress should grant the Agency such authority. MSHA's top personnel claim that if it had that authority

the Agency would exercise it to close operators who refuse to pay their fines. We would welcome that.

### **MSHA Hotline**

The Union has complained for some time that the current hotline system miners use to report hazardous conditions is ineffective. Recently, a member of the UMWA called the 800 number listed on MSHA's website to report a problem at the mine where he worked and was frustrated by problems he encountered. The individual who answered the call, a contract employee, did not have any knowledge of mining, making it extremely difficult for the miner to convey the message. Further, the individual at the call center was not remotely familiar with MSHA's District structure and was therefore uncertain which office should receive the complaint.

The Union has stressed on many occasions that the MSHA hotline should be staffed 24 hours a day, 7 days a week by MSHA personnel with an understanding of the mining industry and the Agency. The current practice of contracting this work out to call centers lessens miners' health and safety.

### **Belt-Air**

In keeping with the mandates of Congress in the 1969 Coal Act, and the 1977 Mine Act, which strictly prohibits the use of belt-air to ventilate working places, the Union has historically been opposed to the use of belt-air to ventilate the working places. The 2006 Alma disaster is a reminder that there is no safe way to ventilate working sections using belt-air. This mine fire was intensified by air from the belt entry, and the contaminated air was dumped onto miners working inby. In addition, conveyor belts used in the mining industry must be made of non-flammable material.

In the MINER Act, Congress directed that there be created a Technical Study Panel to provide independent scientific and engineering review and recommendations with respect to belt air and belt materials; the Study Panel is then to issue a report to the Secretaries of Labor and Health and Human Services, as well as the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and Labor. While this Technical Study Panel has

been constituted and had its first meetings last month, we harbor reservations about its administration. Congress was silent as to its administration, but MSHA staff is providing the support personnel. If its first meetings are any indication, MSHA seems more invested in defending the belt air decisions it has already made, than simply servicing the Study Panel. Congress assigned this Study Panel to offer an “independent” review and recommendations, and we hope it can overcome MSHA’s bias in favor of belt air.

### **Funding for Additional Programs and Health and Safety Protections**

The Union would urge Congress to adequately fund other agencies and programs that advance the Health and Safety of the nation’s miners. These include:

- Pittsburgh Research Center
- Lake Lynn Facility
- Appalachian Laboratory for Occupational Health and Safety in Morgantown, WV
- Approval and Certification Center
- Personal Dust Monitors (PDM)
- Colorado School of Mines

### **Conclusion**

One year ago many of you were present when I testified before the Senate Committee on Health, Education, Labor and Pensions to discuss and review the performance of MSHA and the overall state of mine health and safety. That testimony followed the first two disasters of 2006 at the Sago and Alma Mines. At that time, I described many of the shortcomings in miners’ health and safety.

I am sorry to report that MSHA’s efforts over the past year would do little to change matters today if a mine were to experience an explosion like the one at Sago, or a mine fire like the one at Alma; indeed the underground miners would likely fair no better than those who perished over one year ago. Thanks to the MINER Act, I can presume that any incident would be *reported* within the initial 15 minutes. However, there is no reason to expect that a sufficient number of mine rescue teams would respond quickly. This is because the last year has seen virtually no progress in either expanding the number or improving the proximity of

qualified mine rescue teams.

MSHA still allows mine operators to ventilate working sections with belt-air, and non-flammable belts are still not required. Today there are no requirements that operators provide systems that would enable miners to communicate with the surface or vice versa. There is nothing in place that requires an operator to be able to locate trapped miners, and very few could do so. Safety chambers are not required, nor are safe havens prescribed. Most operators do not have a complete approved emergency response plan as required by the MINER Act. Many miners caught in a disaster would likely have one additional hour of oxygen as opposed to early 2006, but please remember that it took more than 40 hours for the first mine rescue teams to reach the miners at Sago.

We are most appreciative that Congress has worked towards increasing MSHA's budget so more mine inspectors can inspect mines to ensure compliance with the Mine Act. We implore MSHA to demonstrate a similar commitment to enforcing the Mine Act and to improving miners' health and safety so that our industry will never again experience another mine disaster like Sago or Alma. Technology is progressing on a daily basis and the UMWA urges MSHA to require mine operators to employ improvements as they become available.