Remarks of

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for Mine Safety and Health

West Virginia Coal Association 38th Annual Mining Symposium

Charleston, WV

February 2, 2011

I appreciate the opportunity to be here today to address mine safety and health in the coal mining industry.

The safety and health of those who work in mines here in West Virginia and throughout the country is of great concern to President Obama, Secretary of Labor Hilda Solis, myself -- and I am sure -- everyone here today. The Secretary has articulated a forward-looking vision of assuring “good jobs” for every worker in the United States, which includes safe and healthy workplaces, particularly in high-risk industries, and a voice in the workplace for workers as critical elements of a “good job.” We at MSHA are guided by those principles in what we do.

I came to MSHA just over a year ago with a clear purpose -- to implement and enforce the nation's mine safety laws and improve health and safety conditions in the nation's mines so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift.

Having been involved in mining since the age of 18, I have a deep respect for those who choose mining as a career. I understand the importance of mining in our economy. I also understand our collective responsibility to ensure that effective health and safety standards are in place and followed so that miners are not injured, become ill or die on the job. As many of you know, I have spent most of my adult life committed to mine safety and have been directly involved in rescue, recovery and investigation efforts at several mine fires, explosions and disasters. For those of us that have been involved in these with tragic outcomes the hardest part is delivering the news that crushes the last hope of families waiting in vain for a miracle, and having to explain to them why their loved ones died, and why a system designed to protect them from harm had failed. I can also tell you without hesitation that the pain, agony and grief the families endure when these avoidable tragedies occur is beyond measure.

We all know the consequences of a mining tragedy – for families, for communities, for industry – and no one wants to experience them.

Congress explicitly stated in the findings and purpose of the federal Mine Safety and Health Act that "deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families …" Congress clearly sought to end this grief and suffering. That Mine Act also makes clear that mine operators are responsible for maintaining safe and healthful workplaces in compliance with the laws, rules and regulations designed to improve mine safety and health in this country. That Mine Act obligates mine operators to, among other things, examine mines to find and fix conditions that could harm miners. The law is clear that operators must take ownership of safety and health at their mines. Mine operators that ignore that responsibility and leave that important task to MSHA, appropriately face stiff penalties. The reality is, if an MSHA inspector can travel through a mine and identify health and safety violations and cause them to be corrected, so can mine operators.

Many operators understand this legal obligation and have effective safety and health programs in place. They diligently implement those programs every day instead of waiting for MSHA to inspect their mines for them. Unfortunately, some do not share that diligence.

That became came more apparent than ever on April 5, 2010, when an explosion ripped through the Upper Big Branch Mine in southern West Virginia, claiming the lives of 29 miners. Mine safety and health took on a new meaning – and a new urgency – for all of us following that disaster.

Shortly after the disaster, Secretary of Labor Solis and I met with President Obama to brief him on the disaster.

The President said of the Upper Big Branch miners, “We owe them more than prayers. We owe them action. We owe them accountability. We owe them an assurance that when they go to work every day, when they enter that dark mine, they are not alone. They ought to know that behind them there is a company that’s doing what it takes to protect them, and a government that is looking out for their safety.” The President’s words are

my mandate, the mandate of MSHA, and I hope the mandate of the mining industry.

While we continue to conduct an intensive investigation to determine the cause of the accident, there are things we know right now. We know that explosions in mines are preventable, and we know the practices that prevent them. We know a workplace culture that puts health and safety first and operators that live up to their responsibility to comply with the law will save lives and prevent tragedy.

After the disaster at the Upper Big Branch Mine, MSHA began to conduct strategic "impact" inspections at mines that needed greater attention. MSHA has conducted 198 impact inspections at mines of special concern across the country from April 2010 to December 2010: mines that could be at risk of explosion, mines with poor compliance histories or histories of accidents or fatalities, or mines with other warning signs, including efforts to avoid the detection of violations, hotline complaints, or mines with poor self-examination procedures. We've conducted them at mines with particular recurring problems dealing with adverse conditions or with indicators of a lack of a good safety culture. As a result of these impact inspections,

MSHA inspectors have issued more than 4,100 citations and orders for violations of mine safety and health laws, rules and regulations – and miners are safer because we conducted these inspections.

Some of the conditions and violations MSHA has found during impact inspections are quite disturbing, and were found during working shifts when MSHA inspectors were not expected. For example, in July of last year MSHA inspectors commandeered company phones during the evening shift at a mine in Claiborne County, Tennessee, to prevent surface personnel from notifying workers underground of MSHA's presence on the property. Inspectors found numerous ventilation roof support, and accumulation of combustible materials violations. Inspectors discovered the operator was mining 105-foot-deep cuts without a line curtain to direct ventilation, clearly in violation of their approved ventilation plan that required line curtain to be installed and maintained within 20 feet of the face. These conditions can contribute to explosions and black lung. The operator was also mining into an area without necessary roof support, putting miners further at risk from roof falls. In all, MSHA issued 27 citations and 11 orders.

Unfortunately, this mine operator did not get the message. MSHA has now conducted four impact inspections at that mine based on its ongoing compliance problems and apparent disregard for the law, and the mine was given a potential pattern of violations notice in November. In the last impact inspection, after the potential pattern letter went out, inspectors issued four 104(d)(2) orders, including 104(d)(2) orders for accumulations of combustible coal dust of up to 24 inches in depth covering extensive areas where miners work and travel, and a 104(d)(2) order for not properly maintaining a lifeline in the mine's secondary escapeway. Coal and rock dust on the lifeline and reflective markers meant they could not be readily seen by miners to effectively escape to the surface. These violations were again found in January during the pattern of violations evaluation inspection and required equipment to be shut down and coal production to cease.

During another impact inspection last September at a mine in Boone County, West Virginia. MSHA inspectors arrived in the middle of the evening shift and prevented calls to warn those working underground. When they arrived on the sections they discovered that the mine was taking illegal cuts into the coal seam. In addition, many areas of the working section were without adequate ventilation while these excessive

cuts were being taken, exposing miners to the risk of explosions and black lung. The inspection revealed that air readings were not being taken during the work shift, and that the mine ventilation was being short circuited. Fly pads (ventilation curtains) were also rolled up against the mine roof. In other words, miners were exposed to both a black lung risk and conditions that can fuel an explosion to allow easier access for mining equipment. In one particular area, suspended coal dust was so thick it was difficult to see the massive continuous mining machine in operation nearby. MSHA issued 11 closure orders during that inspection.

It is critical to understand that MSHA cannot be at a mine all the time, and that consequently some operators take advantage of that and expose miners to harm. The egregious problems found during these impact inspections, and the extreme measures MSHA had to take to find them – arriving with teams off-shift and commandeering mine phones -- validate the Administration's support of focused improvements to the Mine Act that will give MSHA the tools it needs to address chronic violators that do not get the message that they must take responsibility to operate safely and within the law.

Following the Upper Big Branch disaster, MSHA implemented other strategic actions aimed at improving compliance with the Mine Act to prevent injury, illness and deaths, and especially to prevent tragedies such as the Upper Big Branch disaster.

To assure the mining industry was aware of critical safety requirements and to assure improved compliance, MSHA issued new enforcement policies and alert bulletins addressing specific hazards or problems such as the prohibition on advance notice of MSHA inspections, mine ventilation requirements that protect against mine explosions, and the right of miners to report hazards without being subject to retaliation. These were issues of concern identified during congressional hearings, including the hearing held in Beckley, West Virginia following the Upper Big Branch disaster.

In September, MSHA issued an Emergency Temporary Standard for increasing rock dust, in coal mines to minimize the potential for coal dust explosions. This was based on research by NIOSH.

In addition to the impact inspection program, new screening criteria and tougher procedures were put in place in October 2010 for the pattern of

violations, or POV, program. This was a critical first step in reforming the current pattern of violations program to give the agency an effective enforcement tool to address mines that repeatedly violate safety and health standards. I have long said that the POV process was broken and must be fixed. Not only was the pattern of violations process seldom used, but in the provision's 33 year history, no mine had ever been subject to the full measure of the law as contemplated by Congress. Currently, notifications of potential pattern of violations have been sent to 14 mines. As promised, we have proposed a new rule on Pattern of Violations to address flaws in the current rule and reflect the intent of Congress when it wrote the POV statute. That proposal was made available for public inspection on Monday, January 31st and is now available for public comment.

After the UBB accident , MSHA sought, for the first time under the Federal Mine Safety and Health Act of 1977, an injunction for relief at a mine with a pattern of violation of the Mine Act's mandatory standards which, in our judgment, constituted a continuing hazard to the health and safety of the miners working at the mine. This mine, in Pike County, Kentucky, had a

safety record that could not be condoned or tolerated, was putting miners' lives at risk every day, and required an extreme remedy. From July 2008 to June 2010, MSHA issued 1,952 citations and 81 orders (including 53 (d)(2) orders in 2010 alone) for violating critical safety standards including improper ventilation, failure to support the roof, failure to clean up combustible materials, failure to maintain electrical equipment and failure to conduct the necessary examination of work areas. While the case was pending, the operator made a business decision to wind down operations rather than make the needed investments to address the mine's many substantial compliance issues. MSHA will continue to seek injunctive relief against mines engaged in a pattern of violation where miners are faced with a continuing hazard to their safety or health.

Although much of the agency's efforts were focused on preventing another UBB, it was not just the disaster at the Upper Big Branch last year that led to mining deaths. In total, 71 miners died on the job last year, compared to 34 in 2009. Forty-eight of those deaths occurred in coal mines: 29 coal miners were killed in the explosion at the Upper Big Branch mine in April and 19 additional coal miners lost their lives in other accidents. We are providing information to the mining community about the causes of the

mining deaths that occurred in 2010 and actions and practices needed to prevent a reoccurrences. That information is being posted on our website.

We know how to prevent these deaths, and more must be done to put that knowledge to work. First, the importance and value of effective safety and health management programs cannot be overstated. A thorough, systematic review of all tasks and equipment to identify hazards is the foundation of a well-designed safety and health management program. Equipment, processes, work procedures and management systems should be modified to eliminate or control identified hazards. Operators and contractors should create effective safety and health management programs, ensure that they are implemented, and periodically review, evaluate, and update them. If an accident or near miss does occur, find out why and act to prevent recurrence. If changes to equipment, materials or work processes introduce new risks into the mine environment, they must be addressed immediately.

Effective safety and health management systems are the way to bring about safer and more healthful mining workplaces. To that end, we held public meetings in October to collect information from operators, miners, miners' representatives and other interested parties on effective safety and

health management systems in our nation's mines. Several individuals made presentations identified the components of effective programs. Many have those in place and practice them on a regular basis.

Conducting workplace examinations before beginning a shift and during a shift - every shift - can prevent deaths by finding and fixing safety and health hazards. A failure to conduct adequate examinations can lead to injury, illness and death. Deaths in 2010, as in previous years where conditions were not found and fixed, point to the need for improvements. All required workplace examinations must be performed and identified problems resolved to protect workers. To address the need to ensure effective examinations, MSHA recently published a proposed rule to revise its requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines. The proposed rule would require operators to identify and correct violations of mandatory health or safety standards, and review with mine examiners on a quarterly basis all citations and orders issued in areas where examinations are required. To a great extent the proposed rule would reinstate requirements that were in place for about 20 years following passage of the 1969 Mine Act.

The need for a different approach to examination requirements is clear: in 2009 MSHA inspectors issued 82,126 citations and orders at underground coal mines. This tells us current examination rules are not ensuring that operators find and fix problems that put miners at risk. These violations should have been found and fixed by mine operators, not left for MSHA to find. Comments on the proposed rule are due by February 25.

Effective and appropriate training for miners is another key element in ensuring the safety and health of miners. Mine operators and contractors need to train miners and mine supervisors on the conditions that lead to deaths and injuries and measures to prevent them. Investigations of fatalities frequently identify deficiencies in training and 2010 was no different. Improvements are needed in training miners and mining personnel and that needs to occur to prevent mining deaths and injuries. This is an industry in transition as the workforce continues to be replenished as many new miners and mining personnel, replace the ageing workforce. Efforts must be undertaken to assure that education, training and knowledge transfer keeps pace with that change and does not undercut health and safety gains made over the years. This should be a concern to all of us.

Coal is, quite literally, the fuel of economic growth in this country. It certainly has shown its resilience and capacity for economic recovery. With an outlook into 2012 of increased coal production comes the necessity of developing and investing in sound training, safety and health programs.

MSHA continues to provide information to mine operators, contractors, miners, trainers and others in the mining community on how to prevent injuries and fatalities in mines. In December 2010, MSHA launched a new initiative called “Watch Out!” to draw attention to the potential dangers to miners posed by shuttle cars and scoops in underground coal mines. In the past 10 years nearly 800 miners have been injured in coal mine accidents involving shuttle cars and scoops and 16 miners have been killed. Three deaths in 2010 involved scoops or shuttle cars.

Many miners are being killed or injured when they are crushed by these and other equipment in underground mines. Seventy miners have died from being crushed or struck by equipment such as scoops, shuttlecars and continuous mining machines since 1984. In 2010 alone, six miners were crushed to death in underground coal mines by this type of mining

equipment. Without question, **it is time to act** to prevent these needless deaths. A solution to prevent these deaths is proximity detection technology which can be used to both warn when miners are too close to the mining equipment and can shut down equipment before it crushes the miner. Proximity detection systems have been approved by MSHA for use in U S mines and South Africa is well ahead of the United States mining industry, already using this technology to prevent crushing deaths from continuous mining machines and section mining equipment in underground mines. MSHA is responding to this ongoing threat to miners with plans to issue an emergency temporary standard requiring proximity detection systems on certain types of mining machines.

MSHA continues to move forward on its End Black Lung – Act Now! initiative. For too long, coal miners have contracted, suffered and died from black lung. The problem is particularly acute in the Central Appalachian coal fields and is on the rise with younger miners getting the disease. It is my goal to deliver on the promise of the 1969 Coal Mine Health and Safety Act to prevent new black lung cases and prevent further development of black lung among miners who already suffer.

We launched Phase I of End Black Lung – Act Now! – education, outreach and enforcement – in December 2009. We launched Phase II, the regulatory portion of the initiative, in October 2010 when MSHA published a proposed rule on Lowering Miners' Exposure to Respirable Coal Mine Dust Including Continuous Personal Dust Monitors. We have been conducting hearings on this proposed rule and have extended the comment period until May 2, 2011. I strongly urge you to provide comments to MSHA on this rule. We need your input on this rule. And in the end we need to have a rule in place that protects miners from the disease.

MSHA is striving to improve inspection consistency and quality in the enforcement of the laws, rules and regulations. We will be proposing a new Part 100 rule with the intent of to simplifying the civil penalty system and improving the consistency of citation writing. Establishing a pre contest conferencing process for citations and orders, which allows disputes to be resolved before they become matters of litigation is part of the reforms being assessed. We are continuing inspection audits and looking at how improvements to the audit program could improve our inspections and procedures. We have instituted a training program for MSHA enforcement supervisors that should improve efficiency and consistency in enforcement. And we are taking a comprehensive look at a number of other agency

procedures and activities to identify improvements we can make, over the short term and long term. We believe these will benefit miners, mine operators and MSHA.

At the end of the day, it comes down to this. MSHA cannot be at every mining operation every shift of every day. There aren't enough resources to do that. The law places the responsibility of maintaining a safe and healthful workplace squarely on the operator's shoulders. Improved mine safety and health is a result of operators taking up that responsibility and exercising it. Taking more ownership means finding and fixing problems and violations of the laws and rules before MSHA finds them – or more importantly – before a miner becomes ill, is injured or dies. Mines all across this country operate every day while adhering to sound health and safety programs. There is no reason that every mine cannot do the same.

Strong voices across this country are calling for the mining industry to do better in assuring the safety and health of our country's miners. I know none of us wants to see another miner die in a preventable accident or from preventable illness, and I look forward to working with you in the

industry, with miners, and with the entire mining community to improve safety and health in the nation's mines.

Our common goal is to bring miners home safe and healthy to family and friends at the end of every shift, every day. Working together, we can accomplish that.