

Remarks of

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for Mine Safety and Health

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Thank you for inviting me here today to address mine safety and health in the coal mining industry. I appreciate the opportunity to report on the current state of mine safety and health, and progress in improving it, both by MSHA and the mining industry.

I came to MSHA just over two years 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. In short my

goal was to make mining a better place for miners, their families and the mining community.

Much has changed in MSHA and in the mining industry since then. I quickly placed my administration on a path to improve mine safety and health through stakeholder education and outreach as well as a series of administrative, enforcement and regulatory initiatives and reforms. However, the tragedy on April 5, 2010, at the Upper Big Branch mine, just months after my appointment, unquestionably shook the very foundation of mine safety and caused us all to take a deeper look at the weaknesses in the safety net expected to protect the nation's miners. The impact that tragedy had on the families of the miners lost and the mining community is not measurable. There has been an intense examination of that tragedy, and MSHA and the mining industry have undergone significant change as we have sought to find and fix deficiencies in mine safety and health. One of my most significant challenges was keeping MSHA focused on our overall

mission and agenda to advance mine safety. I want to talk today about where we are, and where we're headed in 2012.

While we know there are mine operators that implement health and safety programs, work to comply with the safety and health rules and protect their miners from injury, illness and death every day, we also know there are those that do not. Bringing those who do not up to the standards of those that do -- to better protect miners -- should be a goal of all in the mining industry. As I have said, a key to improve mine safety and health is for mine operators to take more responsibility for mine safety and health.

I believe the actions we have taken at MSHA, along with those of the mining industry, are making a difference and are making mines safer for the nation's miners. Enhanced enforcement, regulatory and administrative changes from MSHA, and increased compliance and responsibility from the industry has resulted in gains for the cause of miner safety. But I believe more can be

done to assure that the nation's miners can go to work, put in their shift and return home safe and healthy each day.

Underground coal mines unquestionably have the most challenging compliance issues and received much of the agency's attention. MSHA inspected approximately 14,000 mines in the United States in 2011 and issued 157,894 citations and orders according to preliminary data. Of those, 49 percent of the violations were cited at underground coal mines; those mines however represented only 5 percent of the total mines inspected.

It is important to note that our strategic efforts to improve mine safety have been implemented in a way that has allowed economic growth in the coal mining industry. Since the tragic disaster at Upper Big Branch in April 2010, the number of underground coal mines increased by nearly 6 percent and the number of mining units increased by nearly 9 percent. It is also important to note that following our efforts to improve mine safety, compliance in the

mining industry and in underground coal mining is showing signs of improvement. Preliminary data shows that the number of citations and orders issued by MSHA in all mining as previously noted was 157,894 in 2011 down from 171,373 in 2010. Citations and orders issued at underground coal mines was 76,732 in 2011, down from 80,079 in 2010.

Preliminary data shows 37 miners died in work-related accidents at the nation's mines in 2011 – second lowest since statistics have been recorded. There were 21 coal mining and 16 metal/nonmetal mining fatalities last year compared with 48 and 23, respectively, in 2010 - which included 29 at Upper Big Branch. 2009 saw the lowest fatality numbers with 34 total mining deaths, of which 18 were in coal. It is also important to note that the mining industry finished fiscal year 2011 with the lowest number of mining deaths ever recorded. As low as the fatality numbers have come in recent years, we all know that one death is one too many; that mining deaths are preventable; and there is more to be done to protect the

nation's miners. The year the 1977 Mine Act was enacted, there were 273 total mining deaths in the US; 139 were in coal. We've seen those numbers continue to fall since then, and the distance to zero is much shorter now than it was in 1977. I know we all share the goal of zero fatalities.

Of the 37 mining deaths in 2011, 12 occurred at surface coal mines, 11 at surface metal/nonmetal mines, 9 at underground coal mines and 5 at underground metal/nonmetal mines. Kentucky had the most mining deaths — eight — in 2011, followed by West Virginia with six. Nine workers died in accidents involving machinery — six in coal mines and three in metal/nonmetal mines — making this the leading cause of fatal mining accidents. In light of the deaths occurring at surface mines, MSHA is placing increased emphasis on surface coal mine safety and health.

Last year, I began a new initiative by providing detailed information on mining deaths quarterly to the mining industry, as well as

training instructors and state grantees who provide training directly to miners, and posting that on our web site. I wanted to make sure operators, miners and trainers received this critical information to better train and protect miners.

Our initiatives to prevent mining deaths often involve education and outreach along with enforcement. MSHA provides safety alerts and information on health and safety issues, such as our annual winter alert, the safety alert on the increase of fatal accidents at surface mines this fall, the Watch Out! alert regarding shuttle cars and scoops and the Preventive Roof/Rib Outreach Program on improved mine rib control.

We launched our multi-phase Rules to Live By initiative in January 2010, to focus attention on the most common mining deaths and standards associated with those. The second phase, "Rules to Live By II: Preventing Catastrophic Accidents," followed in November 2010, and just a few days ago we announced the next

phase: Rules to Live By III – Preventing Common Mining Deaths.

RLB III highlights those safety standards cited as a result of at least five mining accidents and resulting in at least five fatalities during the 10-year period from January 1, 2001, to December 31, 2010.

This new phase will be added to standards previously addressed in Rules to Live By I and Rules to Live By II. It is important to note that surface fatalities accounted for the highest number of fatalities in 2011 and the new Rules to Live By program addresses mostly surface mining deaths and standards. We are currently evaluating Rules to Live By I and hope to have some results to share later this year.

I have implemented a new approach in the rollout of these and other new initiatives. Stakeholder outreach and education occurs on the front so everyone will know what the program is about and what is expected. That is followed by training of our MSHA inspection personnel through a distance learning program. The training program is posted on the MSHA web site, available to the

entire mining industry so everyone receives the same training and message before the enforcement component is initiated. All training instructors and state grant recipients are also provided the material to use in miner training.

MSHA has a responsibility to develop regulations to protect the nation's miners. We have used that authority to strategically target specific areas to bring about improvement where deaths, injuries and illnesses are occurring. These included regulatory reforms to end the black lung disease that has plagued the coal mining industry for generations; proposed rules on use of proximity detection devices to prevent deaths and crushing injuries from continuous mining machines in underground coal mines that have claimed 31 lives between 1984 and 2011; examinations of underground coal mines by mine operators for compliance with mandatory health and safety standards; revising the "pattern of violations" rule to be consistent with the Mine Act; and announced plans to issue a proposed rule on use of proximity detection

devices to protect miners from being crushed or killed from other mobile mining equipment in underground mines, which has claimed 40 miners lives from 1984 to 2011. The US is behind other countries on utilizing proximity detection technology on mining section equipment in underground coal mines to protect miners.

Consistency remains a key concern to the mining industry, and we continue our efforts to improve consistency in the application and enforcement of our standards. I noted when I became Assistant Secretary that MSHA's workforce had changed significantly. A substantial number of highly experienced mine inspectors had retired, and at the time about 55% of the coal mine inspectors and about 38% of metal non metal inspectors had been conducting federal mine inspections for two years or less. Much of MSHA's supervisory staff was also relatively new. One of the programs I quickly directed be developed to achieve improved oversight of the inspection program and consistency in

the enforcement of the Mine Act was a new training program for all field office supervisors. To date, both metal/nonmetal and coal field supervisors have completed initial training that includes issues identified in agency audits and internal reviews. They will receive re-training every two years.

Another initiative we are undertaking to improve the quality and consistency of mine site inspections is an overhaul of the MSHA coal mine inspection handbook. This will result in an update of the inspection procedures and policies and address issues identified during agency audits and internal reviews, including the current internal review of the Upper Big Branch tragedy.

Last month we began implementation of a new pre-assessment conferencing process in MSHA districts where resources permit. Under this process, mine operators and miners' representatives can request a conference with the MSHA district before a formal contest. As a result of the backlog of contested citations and

orders, however, many MSHA districts will not be able to implement this process until caseloads are reduced. This will allow disputes to be resolved before they are contested and added to the backlog of contested cases. I believe the pre-assessment conferencing process will result in improved communication between MSHA, mine operators, and miners' representatives. It should increase enforcement accuracy and consistency. I have also strongly encouraged mine operators, miners' representatives and our inspectors to utilize the opportunities provided during the actual inspection and the closeout conference held at the mine to fully discuss the enforcement actions taken. I am a strong believer in improving communication at every level.

During my testimony before Congress in 2010, I discussed actions we were considering to address the backlog and improve consistency. One was to simplify citations in order to promote consistency, objectivity and efficiency in the proposed

assessment of civil penalties, and facilitate the resolution of enforcement issues. We are developing a proposed rule to revise the Part 100 penalty rule to accomplish that.

While these and other MSHA initiatives will help control the backlog, the most important change to help the backlog is that Congress has provided funding to the Department of Labor and the Federal Mine Safety and Health Review Commission to help address the huge increase in operator-contested citations that began in 2007. While the contest rate continues to pose a significant challenge to MSHA, the additional resources have allowed us to reduce the total backlog from almost 89,000 citations in January 2011 to fewer than 67,000 in December 2011, a 25% reduction in the span of a year.

On December 6, 2011 we issued the findings of our investigation of the April 5, 2010 Upper Big Branch disaster - the culmination of 20 months of intensive fact-finding by our investigation team. The

investigators concluded that 29 miners died in an explosion that started as a methane ignition and was fueled by excessive amounts of coal dust, transitioning into a massive coal dust explosion. The physical conditions at the mine that led to the coal dust explosion were the result of a series of basic safety violations at UBB, which Performance Coal Company and Massey disregarded. However, the investigation found that policies and practices implemented by Performance Coal and Massey were at the root of the explosion. These included a number of unlawful activities, including the intimidation of miners, advance notice of inspections, and hiding hazards from MSHA through tactics such as the maintenance of two sets of books, recording hazards in the mine's internal production and maintenance book but not in the official examination book. The findings in our report are consistent with the findings from other investigations into the tragedy, including the Governor's Independent Investigation Panel and the United Mine Workers of America.

It is the operator's responsibility to keep miners safe, and the investigation found that the operator promoted and enforced a workplace culture that valued production over safety, including practices calculated to allow it to conduct mining operations in violation of the law.

The tragedy identified that more needed to be done to provide miners with a voice in the work place, to ensure mine operators would not employ practices that hid safety violations and exposed miners to hazards and that MSHA needed to more aggressively use its tools under the Mine Act. It also identified a culture in mining that was in need of change from one of noncompliance, worker intimidation and lack of respect for miners' safety to a proactive culture of compliance, inclusion and respect for the right of workers to a safe work place. Following the acquisition of Massey Energy by Alpha Natural Resources, MSHA and Alpha arranged for training of the Massey / Alpha employees at the MSHA Academy and to date approximately 1,100 employees

have received supplemental health and safety training. On December 6, 2011, the Department of Justice, the U.S. Attorney's Office for the Southern District of West Virginia and Alpha entered into an agreement that called for change in the way the new operator of Massey Energy mines would carry out mining safety. The agreement obligates Alpha to a number of safety improvements. These include the use of coal dust explosibility meters to allow immediate results of the combustible content of coal mine dust to prevent mine explosions; the application of atmospheric monitoring systems to better detect conditions in the mine atmosphere to prevent mine explosions and oxygen cascading systems to help miners escape during mine emergencies.

We are encouraged to see this and other efforts by mining companies to advance improvements in safety and health technology. Alliance Coal is installing proximity detection equipment on continuous mining machines to prevent crushing

deaths and injuries – they are now up to 39 machines. Consol and Peabody Energy are working on the application of proximity detection protections to section mining equipment. Consol is also doing valuable work to help develop through-the-earth audible communications. Arch Coal has been a leader in mine emergency preparation with the large scale MERD training it conducts. These are just some of the things industry leaders are doing to improve the health and safety of their employees. We have been and will be holding stakeholder meetings to foster continued advances and improvements in these and other areas.

We are also working to resolve a number of other mine safety issues. Last year I requested both NIOSH and the mining industry work with MSHA to identify how to best utilize scrubbers in deep cut mining settings to better protect miners from diseases resulting from breathing coal mine dust. As a result, some in-mine studies have been completed and discussions are ongoing

with the mining industry to identify how these systems can be best used to protect miners.

In early 2010, I launched an effort to convene the first of several stakeholder meetings to identify gaps in preparedness for effective and coordinated mine emergency response. Challenges in command and control, rescue teams, emergency response, training, availability of resources and equipment, and overall coordination have been addressed. This May we will convene a mine rescue summit with members of the mine rescue community and other stakeholders to identify needed improvements and set a path forward for making those improvements.

The Mine Act 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. The Act also obligates mine operators to 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. If an MSHA inspector can travel through a mine and identify these conditions, so can mine operators. Mine operators that ignore their responsibility and leave that important task to MSHA appropriately face stiff penalties.

One of our enhanced enforcement strategies is our impact inspection program, instituted after the tragedy at Upper Big Branch. From April 2010 through December 2011, we conducted 387 impact inspections at coal and metal/nonmetal mines.

Overall compliance is improving at mines after receiving impact inspections. Since September 2010 when MSHA launched the current impact inspection program, violations per inspection hour are down 11 percent after mines received an initial impact inspection; S&S violation rates are down 18 percent; 104(d) orders are down 38 percent. The total lost time injury rate at these mines is down 18 percent.

But there are still mines that haven't gotten the message. MSHA recently conducted a seventh impact inspection at one mine that is a particularly good example. 27 citations and 15 orders were issued after finding serious safety hazards and combustible materials (loose coal up to 2' deep under the entire length of 2 belt conveyors), unwarrantable failure orders for unsafe roof, and inadequate examinations. A recent impact inspection found a mine operating with virtually no air at the face, which is needed to prevent explosions and black lung disease.

There are operators who don't get it and place miners at risk. We all know MSHA cannot be at every mine all the time. The egregious problems found during some of these impact inspections, and the extreme measures MSHA had to take to find them – arriving off-shift and commandeering mine phones -- validate the Administration's support of focused improvements to the Mine Act that to give MSHA the tools it needs to address

chronic violators that fail to take responsibility to operate safely and within the law.

We believe our changes to the PPOV process are also improving safety. We have strengthened our PPOV process, and recently conducted our second screening with the revised criteria. Since November 2010, we have issued a total of 28 PPOV notices at 26 mines, and issued two POV notices, the first time we successfully placed a mine on POV and issued closure orders in the Mine Act's 33 year history. 17 mines were placed on PPOV based on our November 2010 screening with four of those after agency audits revealed the mine operators under-reported injuries. Following the 2011 screening, MSHA issued PPOV notices at eight mines with additional mines subject to PPOV notices.

Better targeting of mines for PPOV action, stiffening the requirements to achieve improvement goals and holding mine operators accountable to maintain improvements have resulted in

positive changes in mine safety. We are encouraged by the results of a recent review of enforcement data on the 14 mines that received PPOV notices in 2010. Since completing the PPOV process, the total violation rate among these mines is down 21 percent, the total S&S violation rate is down 38 percent, and the rate of 104(d) orders is down 60 percent. The lost time injury rate at these mines has dropped 39 percent.

We are conducting these PPOV screenings openly and transparently. The criteria we use for PPOV screenings are posted on our website, and in April of last year, we also created a new on-line tool which permits any mine operator, miner or member of the public to determine, based on the most recent data available, how a specific mine matches up with the criteria for a potential pattern of violations. Any operator with a concern can use the tool and implement immediate corrective actions to keep violations below the thresholds that could trigger a PPOV notification.

There have been a number of other actions and initiatives implemented to improve mine safety and health. Those have included the evolving agency “scofflaw” program that targets mines that continue to operate while ignoring penalties; the use of injunctive relief under the Mine Act to require mines to improve conditions and comply with the prohibition against advance notice of MSHA inspections; an increased focus on miners’ rights under the Mine Act to participate free from discrimination in ensuring the safe operation of their mine in assuring that their mine is operated safely; the “End Black Lung Act Now” campaign, which incorporates enhanced education and enforcement actions to end black lung disease; the issuance of a number of bulletins to remind the mining industry and MSHA of regulatory and legislative requirements such as miners’ rights, the prohibition on advance notice of MSHA inspections, mine ventilation, rock dusting and beefing up compliance; the issuance of a final rule requiring more rock dusting of mines to prevent mine explosions

and disasters; the creation of new MSHA District 12 to provide better management and oversight of the large concentration of coal mines in southern West Virginia; the completion of implementation of the communications and tracking requirements in underground coal mines mandated by the 2006 MINER Act, and work with industry stakeholders on a several initiatives to improve mine safety and health.

Improving mine safety and health continues to be of great importance 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.” President Obama reiterated this commitment to “good jobs.” In the State of the Union Address last week, he laid out a blueprint for an economy built on American manufacturing, American

energy, and skills for American workers. The President's vision is for a new era for American energy—an economy fueled by US energy sources that will be designed and produced by American workers. Coal has been and continues to be important in that diverse energy mix. We must ensure that the coal miners who sustain that energy economy are working in safe and healthful workplaces.

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 clearly 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. Many 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.