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**TO ABOLISH THE FEDERAL METAL AND NONMETALLIC
MINE SAFETY BOARD OF REVIEW**

GOVERNMENT

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HEARING

BEFORE THE

COMMITTEE ON

GOVERNMENT OPERATIONS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 1774

**TO REORGANIZE THE EXECUTIVE BRANCH OF THE GOV-
ERNMENT BY ABOLISHING THE FEDERAL METAL AND
NONMETALLIC MINE SAFETY BOARD OF REVIEW AND
TRANSFERRING THE FUNCTIONS AND POWERS OF SUCH
BOARD TO THE SECRETARY OF THE INTERIOR**

JUNE 11, 1975

Printed for the use of the Committee on Government Operations



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FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

WEDNESDAY, JUNE 11, 1975

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The committee met pursuant to notice at 10 a.m., in room 224, Russell Building, Abraham Ribicoff (chairman) presiding.

Present: Senators Ribicoff and Percy.

Staff present: Dick Wegman, chief counsel and staff director; Marilyn Harris, chief clerk; Charles Platt, assistant to the majority; Mark Bravin, assistant to the minority; and Ken Ackerman, researcher.

Chairman RIBICOFF. The committee will be in order.

OPENING STATEMENT OF SENATOR RIBICOFF

Today the Committee on Government Operations begins hearings on S. 1774, a bill introduced by Senator Percy to abolish the Federal Metal and Nonmetallic Mine Safety Board of Review.

The startling revelation with regard to this Board is not simply that it has no work to do, but rather that it apparently has never had any work to do. While the Board was established to hear appeals from mine operators whose mines were subject to a closure order by the Department of Interior's Office of Mining Enforcement and Safety Administration, not a single case has been appealed to the Review Board in the nine years of its existence.

Unfortunately, this is just one of a number of government agencies and offices which were created originally for valid reasons but which have long since outlived their usefulness to the people of this country.

Last year the Congress and the President established 85 new agencies, boards, councils, committees, and commissions to carry on the work of the Government. We abolished only 15 agencies. Now I do not mean to suggest that all of the new agencies were unnecessary. On the contrary, the great majority of them were needed responses to critical national problems in such areas as energy, education, health, and legal services. The Agency for Consumer Advocacy, which is now before the House, is another agency in the same category, whose importance and necessity has been clearly recognized.

Nevertheless, we must strive to achieve some sort of balance. We seem to be making some progress in our efforts to meet the grave challenges facing our country through the establishment of new vehicles for administrative action. But we have largely neglected another national problem: The waste in the Federal Government reflecting the continued funding of needless agencies that are cluttering up the executive branch and draining away the taxpayers' money.

I feel very strongly that agencies whose reason for being has long since passed, if indeed it ever existed at all, should be removed from both the Federal budget and from the statute books. The committee staff has therefore been directed to vigorously pursue this matter and has already been in touch with the Office of Management and Budget, the General Accounting Office, and the Library of Congress to weed out unnecessary agencies.

Today we are taking a first step in this direction. I assure my colleagues that there will be many more such steps as this committee seeks to devote as much of its attention to discarding wasteful government entities as it devotes to the creation of necessary new agencies.

I want to make it very clear that all we are considering today is the abolition of this Board. The Committee on Labor and Public Welfare presently has before it S. 1302, of which I am a cosponsor. S. 1302 would also abolish the Board as part of a major overhaul of the mine safety enforcement apparatus designed to fully protect our Nation's miners. We fully recognize the substantive jurisdiction and expertise of the Labor and Public Welfare Committee in this area, and by action on S. 1774 we do not intend to thwart or delay the Labor Committee's consideration of S. 1302 in any way. The abolition of this Board and the transfer of its functions to the Secretary of the Interior, if approved by the Government Operations Committee and the Congress, are merely interim reorganization measures to avoid waste of Government funds pending major action on mine safety by the Labor Committee.

We are more than pleased to have Congressman Hechler, who is so knowledgeable in this entire field, with us today.

Before we hear from the Congressman, may I ask unanimous consent that we include for the record a letter from Congressman John B. Anderson recommending abolition of the Board and a letter from Robert F. Keller, Acting Comptroller General, concurring in the objectives of S. 1774.

[Letters from Congressman Anderson and Mr. Keller follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 10, 1975.

HON. ABRAHAM A. RIBICOFF,
*Chairman, Senate Government Operations, Dirksen Senate Office Building,
Washington, D.C.*

DEAR MR. CHAIRMAN: I would like to commend you on holding oversight hearings on the Federal Metal and Nonmetallic Mine Safety Board of Review. Based on the information available to me on the inactivity of this Board over the years, I think it should be abolished.

Therefore, on Wednesday, June 4, 1975, I introduced a bill, H.R. 7576, which would abolish the Federal Metal and Nonmetallic Mine Safety Board of Review and transfer its functions and powers to the Secretary of the Interior.

I have enclosed a copy of H.R. 7576 for your perusal.

With all best wishes, I am

Very truly yours,

JOHN B. ANDERSON,
Member of Congress.

Enclosure.

[H.R. 7576, 94th Cong., 1st sess.]

A BILL To amend the Federal Metal and Nonmetallic Mine Safety Act of 1966 for the purpose of terminating the Federal Metal and Nonmetallic Mine Safety Board of Review

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 10 and 11 of the Federal Metal and Nonmetallic Mine Safety Act of 1966 (80 Stat. 778-779; 30 U.S.C. 729-730) are hereby repealed.

Sec. 2. Section 2(e) of the Federal Metal and Nonmetallic Mine Safety Act of 1966 (80 Stat. 772; 30 U.S.C. 721(e)) is repealed.

SEC. 3. Section 12 of the Federal Metal and Nonmetallic Mine Safety Act of 1966 (80 Stat. 782; 30 U.S.C. 731) is amended to read as follows:

"SEC. 12. (a) Any final order issued by the Secretary under this Act shall be subject to judicial review by the United States court of appeals for the circuit in which the mine affected is located, upon the filing in such court of a notice of appeal by the operator aggrieved by such final order within thirty days from the date of the making of such final order.

"(b) The party making such appeal shall forthwith send a copy of such notice of appeal, by registered mail or by certified mail, to the Secretary. Upon receipt of such copy of a notice of appeal the Secretary shall promptly certify and file in such court a complete transcript of the record upon which the order complained of was made. The costs of such transcript shall be paid by the party making the appeal.

"(c) The court shall hear such appeal on the record made before the Secretary, and shall permit argument, oral or written or both, by both parties. The court shall permit such pleadings, in additions to the pleadings before the Secretary, as it deems to be required or as provided for in the Rules of Civil Procedure governing appeals in such court.

"(d) Upon such conditions as may be required and to the extent necessary to prevent irreparable injury the United States court of appeals may, after due notice to and hearing of the parties to the appeal, issue all necessary and appropriate process to postpone the effective date of the final order of the Secretary or to grant such other relief as may be appropriate pending final determination of the appeal.

"(e) The United States court of appeals may affirm, annul, or revise the final order of the Secretary, or it may remand the proceeding to the Secretary for such further action as it directs. The findings of the Secretary as to facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(f) The decision of a United States court of appeals shall be final, subject only to review by the Supreme Court."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 10, 1975.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations,
U.S. Senate.

DEAR MR. CHAIRMAN: We have reviewed the bill S. 1774 currently under consideration by your Committee and concur in its objectives of abolishing the Federal Metal and Nonmetallic Mine Safety Board of Review and transferring all functions and powers of the Board to the Secretary of the Interior.

The Board of Review was created by the Federal Metal and Non-metallic Mine Safety Act of 1966 (P.L. 89-577; 30 U.S.C. 729-731) to provide mine operators with a means of appealing closure orders issued for violation of safety standards established by the Act. Although operators can, in most cases, appeal either to the Secretary of the Interior or directly to the Board, only decisions of the Board can be appealed to the courts.

The Board was patterned after a similar Board of Review created under the Federal Coal Mine Safety Act of 1952 (30 U.S.C. 475-478). The Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173; 30 U.S.C. 801 et al.) abolished this Board of Review, however, and transferred its functions to the Secretary of the Interior.

Although we have not reviewed the effectiveness of the current appeal procedures, the inactivity of the Board since its inception in 1971 and the existence of alternative appeal procedures through the Secretary of the Interior indicate that the Board is unnecessary. We believe, however, that the bill should contain provisions to insure that the essential right of mine operators to appeal to the courts is preserved.

We hope these comments will be useful to the Committee in its deliberations.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

Chairman RIBICOFF. You are more than welcome, Congressman. Please proceed.

TESTIMONY OF HON. KEN HECHLER, U.S. REPRESENTATIVE FROM
WEST VIRGINIA

Mr. HECHLER. Thank you. I congratulate you on your opening statement and I congratulate this committee on holding this hearing.

Mr. Chairman, I congratulate Senator Percy for S. 1774, the bill to abolish the totally useless Federal Metal and Nonmetallic Mine Safety Board of Review. The taxpayers of the Nation should be grateful to this committee for taking this step to do away with an agency which has served no function, heard no appeal, done nothing constructive, and has remained totally moribund in the 9 years since it was created in 1966.

This Board was created by the Federal Metal and Nonmetallic Mine Safety Act of 1966 to hear and decide appeals by noncoal mine operators from mine closure orders issued by Federal inspectors under the 1966 act. For 5 years, the Board did not even go into operation because of a long delay by the Department of the Interior in promulgating regulations to implement the 1966 act.

Finally, on July 30, 1971, the Board was officially "activated." Yet, in the period since July 1971, the Board has heard no appeals whatsoever. The Department of the Interior already has a Board of Mine Operations Appeals within the Office of Hearings and Appeals, which really makes this Board of Review totally unnecessary. Interior's Board was established in 1970 in order to handle both coal and noncoal mine closure appeals.

I am shocked at the failure of either the President or Congress to take the necessary action to do away with this Board which has languished in innocuous desuetude for so many years. Every year, the President almost mechanically includes money in his budget to perpetuate the Board, at the same time he is urging Congress and the Nation to exercise fiscal responsibility. Every year, the Congress blindly appropriates money for this Board's continued inactivity. The authorizing committees of both the House and Senate have declined to act to abolish the Board. Repeated appeals to the President have gone unanswered.

Congress can act with indecent speed on Earth-shaking measures like authorizing television coverage of close-in football games, but there are all kinds of buckpassing excuses when it comes right down to the issue of how do you turn off the spigot of the Federal funding of this useless Board.

The Board of Review has five members, two from industry, two from the United Steel Workers of America, and the chairman is Dr. Howard L. Hartman, dean of the school of engineering of Vanderbilt University. (See attachment.)¹ The Board members are unsalaried, but they collect travel and per diem expenses for the Board meetings, which have been held at such attractive spots as Las Vegas, Nev., on October 8, 1974; Denver Colo., on September 7, 1973; and San Francisco, Calif., on February 24, 1972. The meeting in Las Vegas cost the taxpayers \$1,885.99. This was not as expensive as the San Francisco meeting, which ran up a total tab of \$3,302.74. All in all, these meetings cost \$8,405.83 in travel expenses, and \$3,750 in per diem payments for a grand total of \$12,155.83 over a 4-year period.

Now this doesn't sound very high, but you have to admit that is quite

¹ See p. 13.

a chunk of money to pay to have five Board members and an executive secretary to sit around in Las Vegas or San Francisco to hold solemn discussions on whether or not they will remain in existence another year. They actually had a vote in the Las Vegas meeting as to whether or not to recommend to Congress that the Board be abolished. The Chairman of the Board, Dean Hartman of Vanderbilt, made a motion that the Board be abolished; the motion was ruthlessly repulsed by the other members of the Board, who steam rolled the motion into a resounding 4-to-1 defeat.

There is a full-time executive secretary of the Board at the munificent salary of \$19,693 per year—at least that's munificent for doing absolutely nothing. There is a charming secretary to the executive secretary who draws down \$14,125 per year for doing absolutely nothing, which is very good pay. She demonstrated her alertness recently by suggesting to a reporter from one of the wire services that because of my recent public attacks on the uselessness of the Board, it might become necessary for the Board to hire a public relations specialist to improve the image of the Board.

One month ago Monday, on May 9, I decided to pay a personal visit to the Board's offices in room 707 of the plush Universal Building at 1875 Connecticut Avenue, N.W., right next to the fashionable Washington Hilton Hotel. There is 670 square feet of space, for which the taxpayers pay \$4,087 annually. As I entered the office, I observed that the telephone was off the hook, which would of course give anyone telephoning the Board a busy signal—even though the office was far from busy. After waiting 5 minutes in the outer office, I gave the customary greeting to unmanned Government agencies: "Hello, dere!" Receiving no answer, I cautiously peeked into the other two offices in the three-room suite. A morning newspaper was sprawled on the floor at the head of a long couch. A stereo machine was at the ready, along with a pile of Beethoven records and an elaborate coffeemaking machine.

The absence of any of the Board's personnel recalls the title of a book by Robert P. Smith:

"Where Did You Go? Out,

"What Did You Do? Nothing.

When asked by the press about my discovery, Mr. Hale candidly explained "there's nothing whatever to inhibit me from listening to Beethoven records. I think it's a good idea." He further indicated that during the time of my unannounced inspection trip he had been down at the Interior Department in conference, and his secretary had to visit the doctor that day. In justice to Mr. Hale, I must also report that he has officially indicated that both the coffee machine, the stereo, and what he terms the "elaborate setup" in his office were present at "no charge to the Government."

I am grateful to Mary E. Burke, who serves as the \$14,124-per-year secretary in this Board's office, for preparing memorandum to indicate some spartan reductions in expenditures down through the years. For example, the furniture in the suite of offices was obtained from the Department of the Interior at "no cost to the Board and no charge for moving same." The Agency for International Development allows the Board to use its duplicating machine. The original suite of offices comprised 2,300 square feet and has been progressively reduced to a paltry 670 square feet. Finally, in a burst of economy, two of the Board's outside telephone lines were removed in December, 1973.

Despite these very commendable economy measures, over \$250,000 of the taxpayers' money has been totally wasted on the care and feeding of this vermiform appendix. The annual reports of the Board are models of brevity, averaging less than one page in length. The latest report on the calendar year 1974 contains this significant statement:

Though 1,998 mine-closure orders were issued in 1974 under the Federal Metal and Nonmetallic Mine Safety Act, none of these orders was appealed by a mine operator to this Board. Therefore, assuming these orders have been enforced, either the mines remain closed, or they have reopened because the violations have been abated, or the order has been annulled or revised by the Secretary of the Interior.

In many cases, closure orders extend for only a few hours or days. The inspectors, after reinspection, reopen the mine, or portion thereof, if the danger items have been corrected. This procedure is apparently favored by the operators because it insures that the mine, or portion thereof, will be opened immediately after abatement of the danger. Any appeal to the Board of Review could take days or even weeks and, in the meantime, the mine or portion thereof is closed and nonproductive. Further, as noted above, the Department has a Board of Mine Operations Appeals within the Department's Office of Hearings and Appeals. This particular appeal mechanism was utilized on March 17, 1975, in a mine-closure order case involving the Grand Rapids Gypsum Co. On April 29, 1975, Interior's Board denied the appeal, and it is my understanding that the company has decided to abate the violation which renders the appeal moot.

In a letter dated October 18, 1973, Jubal Hale, executive secretary of the Board of Review made the very candid admission that the Board did nothing. In response to the question "What did the Board and its staff do in 1972 from day to day since it had no business before it?" Mr. Hale responded: "Since it had no business before it, the Board did nothing on a day-to-day basis."

The minutes of the Board's meeting of February 24, 1972, do reveal one item of tremendous significance which was the subject of extended discussion by the Board when it met in San Francisco, Calif. on that date. I quote verbatim from the minutes of that historic meeting:

Several designs for a Board seal, which had been prepared by the Institute of Heraldry, Department of the Army, were presented to the Board for consideration and adoption as a Board seal. The Board seemed to feel that perhaps further consideration should be given to the selection of a seal, whereupon Mr. Robert W. McVay's motion to table the matter was passed unanimously.

Although there is no further mention of the weighty matter of choice of a seal, perhaps a competition could be sponsored for an appropriate design. As a starter, we might suggest a replica of a giant gold brick.

S. 1774 moves in the right direction, but there are several features of S. 1774 which deserve comment. I have introduced H.R. 3431 on February 20, 1975, which repeals section 2(e) and sections 10 and 11 of the Federal Metal and Nonmetallic Mine Safety Act of 1966, as does S. 1774. However, I note that S. 1774 also repeals section 12 of the 1966 act. Section 12 is the judicial review section of the act and it should not be repealed. Certainly S. 1774 should provide for appeal to the courts from a decision by the Secretary of the Interior's Board of Mine Operations Appeals.

A second aspect of S. 1774 deserves comment. Section 2 of S. 1774 provides that "all functions and powers of the Federal Metal and Non-metallic Mine Safety Board of Review are hereby transferred to the Secretary of the Interior." I believe this section of S. 1774 is superfluous, because if you abolish the Board of Review there are no functions to transfer. If by this provision the bill seeks to insure judicial review, I suggest that an amendment to section 12 of the act will achieve this.

Finally, both Senator Williams and I have introduced legislation to transfer the entire mine safety function, covering both coal and non-coal mines from the Department of the Interior to the Department of Labor. We feel that this employee-oriented activity shall be transferred to a department which oversees related activities on behalf of employees, instead of remaining in a department which is primarily oriented toward production of minerals. For these reasons, I invite your attention to H.R. 3431, which has 46 cosponsors in the House of Representatives.

Despite the large number of cosponsors of H.R. 3431, I regret that neither the President nor the Congress have taken action to abolish this do-nothing Board. In a sense, it is a test of the ability of our system of government to act, and I trust that the system will work very soon before more citizens become infected with cynicism about our ability to act.

Thank you, Mr. Chairman.

Chairman RIBICOFF. How long have you been personally trying to get this Board abolished?

Mr. HECHLER. I started in a quiet and friendly way in 1973 to try to get this useless Board abolished. I tried to get it done through the system, but apparently that did not succeed, so I had to resort to other methods.

Chairman RIBICOFF. Thank you. There is no other question. This is a symbol of whether the executive and the legislative branch will sit by and allow useless agencies to remain in existence with no functions as far as the Nation and the taxpayers are concerned. We expend large sums of the money that we do not have in payment.

I commend Senator Percy for introducing this measure. He certainly has my support. We thank you for your consistent fights.

I am sorry it was so long before anybody gave it any attention.

Senator Percy, would you like to comment?

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. Yes. I am very pleased to have our distinguished colleague here. He has, as he knows, more members of my family in his State than any other State in the Union, my daughter, son-in-law and three grandchildren.

We have also shared in common huge coal reserves in both of our States and a deep devotion to mine safety.

I might say also, a devotion to Government efficiency. We are both frustrated. When I came on this committee years ago I tried to get abolished one or two Presidential commissions that I felt were totally inept and inadequate. The members, themselves, said they performed no useful function. Yet, we could not eliminate one or two of them. We finally put a law through, the Federal Advisory Committees Act, that required a reenactment and reauthorization every 2 years. I think we

cut about 130 out when the law took effect last January and saved millions of dollars.

We still have a long way to go on the \$42 million spent on those committees and commissions. Here is, as the chairman said, a prize example of whether or not we can really respond when we have the total cooperation of the Executive Director of the entity, itself. We have never had a clearer case for any one particular bureaucratic reform as the abolition of this particular Review Board. As we all know, the Board was created for the sole purpose of hearing appeals from mine closure orders issued by mine inspectors under the 1966 Federal Metal and Nonmetallic Mine Safety Act. No appeals have ever reached the Board, and as a result, the Board has had nothing to do during the 4 years of its existence. Since 1972, of 3,392 mine closures ordered, only one has ever been appealed, and that particular case was appealed to the Secretary of the Interior and not to the Review Board, as has been pointed out.

Mine safety is a matter of concern to all of us. Men who literally risk their lives on a daily basis to provide this country with the mineral resources so vital to the national well being deserve the greatest protection we in the Congress can offer through legislation. It was with this feeling in mind that the Congress first created the Review Board in 1966 as part of a general mechanism for carrying out the kind of safety program we believed necessary.

Today, Mr. Chairman, we are faced with the realization that this mechanism has not worked out in the manner we originally foresaw. In line with this committee's responsibility as overseer of the Federal bureaucracy, I introduced this legislation to cut away the extraneous fat from the mine safety program, to eliminate this Review Board which has now been shown to be superfluous and unnecessary.

The failure of the Review Board, which I might add does not appear to be the fault of the Board members or staff themselves, raises a number of questions both organizational and substantive in nature which I hope can be developed in the course of the hearing this morning. The fact that only one appeal has been made out of over 3,000 closure orders issued, presents a serious suspicion that perhaps the procedure for issuing these orders is too lax. I have asked the Comptroller General to take a look at the mine closure appeals process, and I also hope that our Interior Department witness will be able to shed some light on this issue in the course of questioning.

Mr. Chairman, I apologize for the fact that I am working under some time restraints, as I know you are, too, this morning. The Permanent Subcommittee on Investigations is holding a hearing on the Drug Enforcement Administration. I promised that I would be joining Senator Jackson just as quickly as I possibly can.

I do have a few questions for Representative Hechler. I think they will be very brief, indeed.

I do want to say, Congressman Hechler, you have persistently and diligently pursued the objectives we hope to achieve through passage of S. 1774; namely, abolition of the Review Board. As Senator Ribicoff has indicated in his opening statement, we are also aware of your fine work to bring about comprehensive reforms in the area of mine safety. We support that effort wholeheartedly.

Several members of this committee are cosponsors of the Williams bill. Our chairman, Senator Ribicoff; Senator Javits, ranking minor-

ity member on the Labor and Public Welfare Committee; and Senator Metcalf, are all cosponsors of S. 1302. Government Operations Committee today focuses on the fact that \$250,000 in Federal funds have gone to support a nonactive Federal agency. There are \$15,000 requested for the 3-months transition period and \$60,000 requested for fiscal 1976.

You note in your testimony that the authorizing committees of both Houses have declined to act to abolish the Board. Could you tell us and expand on the thought as to how exactly they did respond to your efforts?

Mr. HECHLER. The informal response that I get from talking with chairmen and staff of the authorizing committees is that those committees would prefer to wait until the comprehensive legislation which you cited, such as the Williams bill, comes up. My response to that and to this committee is that that is a controversial bill. It will take months to get through. The whole question of whether or not the mine safety function for both coal mines and noncoal mines should be transferred to the Department of Labor, and all of the attendant issues of how you structure your mine safety operation are so complex that it seems to me we should not wait until that time before we abolish this useless Board of Review.

It would only mean further waste of the taxpayers' money if we deferred action on this one segment of that issue, which is abolition of this useless Board.

As the chairman said in his opening statement, this committee is focusing on that one issue, rather than the larger issue of development of mine safety legislation and where it will be transferred.

Senator PERCY. Have you tried to just simply cut funds off for the Board in the House Appropriations Committee?

Mr. HECHLER. I have testified before the House Interior Appropriations Subcommittee, and presumably their appropriation bill will be coming to the floor of the House in July. I have received no assurance from the House Appropriations Committee that these funds will be cut off.

Even if the funds are cut off, the Board would still be existent on paper, but it is also important to stop the funding. Perhaps a cleaner cut operation would be to cut off the authorization. I hope this committee will so recommend and that the Senate and House can move with all deliberate speed to get this Board abolished.

Senator PERCY. I have a letter dated June 3, 1975, from Robert Long, associate solicitor, Mine Health and Safety, to J. David Willson, staff assistant, Interior Subcommittee of House Appropriations. Have you seen that letter, Congressman?

Mr. HECHLER. It was called to my attention late last evening. I looked at the letter, and the letter itself concludes that, in effect, the argument of a possible appeal in violation of due process is only speculative.

It would seem to me that both the Interior Department and the Congress ought to devise the necessary means in this legislation to protect due process, instead of having a bunch of lawyers come out with reasons why we have to continue a totally do-nothing Board.

Senator PERCY. It is our job to cut through this. What we have is a legal opinion here that there will be legal problems that would arise if we simply cut appropriations off without abolishing the Board.

Mr. Chairman, I would offer the letter for the record.
 Chairman RUBIOFF. Without objection, it will go in the record.
 [Letter from Robert W. Long follows:]

U.S. DEPARTMENT OF THE INTERIOR,
 OFFICE OF THE SOLICITOR,
 June 3, 1975.

J. DAVID WILLSON,
*Staff Assistant, Committee on Appropriations, Subcommittee on Interior and
 Related Agencies, Room B-308, Rayburn Office Building, House of Repre-
 sentatives, Washington, D.C.*

DEAR MR. WILLSON: This letter is in response to your telephone inquiry to me of May 10, 1975, regarding operators' rights of appeal under sections 9 and 11 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 728 and 730), and the legal consequences of Congressional failure to appropriate funds for the Federal Metal and Nonmetallic Mines Safety Board of Review.

Section 8 of the Federal Metal and Nonmetallic Mine Safety Act mandates that authorized representatives of the Secretary issue withdrawal orders, (that is, orders requiring all persons, except those necessary to eliminate the given hazards, to be withdrawn from and prohibited from entering the hazardous area) in two situations: (a) where a danger exists which could reasonably be expected to cause death or serious physical harm immediate or before the imminence of such danger can be eliminated; or (b) where a violation of a mandatory health or safety standard has not been totally abated within the time specified for abatement.

The Act establishes two methods of operator appeal from such withdrawal orders.

Section 9 of the Act creates an appeal procedure to the Secretary available to any operator served with an order pursuant to section 8. Under this procedure the operator applies to the Secretary for an annulment or revision of such order. The Secretary then makes or causes to be made a special inspection of the mine in question, followed by findings and orders in accordance with procedures specified in section 9 (a) and (b).

Under the Department's procedures pertaining to hearings and appeals, the Office of Hearings and Appeals is responsible for making findings and orders relating to review of withdrawal orders in accordance with section 9 of the Act (See 43 CFR 4.650 through 4.666). The Board of Mine Operations Appeals within the Office of Hearings and Appeals "... performs finally for the Department ... the review authority of the Secretary under the Federal Metal and Nonmetallic Mine Safety Act ..." (43 CFR 4.1(4)) (Emphasis added).

Although the administrative review procedures established under section 9 of the Act constitute the only review available *within the Department and culminate in a final Departmental decision*, section 9 is not the only method of administrative review available to operators nor does completion of section 9 procedures exhaust the administrative remedies available in the Executive Branch.

Section 10 of the Act establishes the Federal Metal and Nonmetallic Mine Safety Board of Review composed of five members appointed by the President by and with the advice and consent of the Senate. The sole function of this Board is to hear and determine applications filed pursuant to section 11 of the Act for annulment or revision of orders made pursuant to section 8 or section 9 of the Act. Section 11 of the Act sets forth the procedure for an operator making application to the Board for annulment or revision of an order made in accordance with section 8 *without first seeking review by the Secretary under section 9. It also permits review of an order issued by the Secretary under Section 9.* The procedural regulations of the Federal Metal and Nonmetallic Mine Safety Board of Review are contained in 30 CFR Part 400.

To summarize briefly then, the Act provides a *complementing yet dual administrative review structure*. An operator can elect to appeal a withdrawal order to the Secretary in accordance with section 9 of the Act, and subsequently he may appeal to the Board pursuant to section 11 for annulment or revision of the Secretary's section 9 order. *In the alternative*, an operator may choose to bypass the section 9 procedures by appealing for an annulment or revision of the withdrawal order *directly to the Board* under section 11.

Keeping in mind the above description of the administrative remedies established by the Act, it would appear that the legal consequences of Congressional failure to appropriate funds for the Review Board could be suits against the Congress and/or the President and/or the Secretary for failure to provide due process of law as mandated by the Act. Conceivably successful litigation of this nature could result in a virtual halt to this Department's ability to enforce compliance with the Act.

A cause of action based on denial of due process could well lie since without funding the Review Board could not fulfill its statutory function of providing an alternative administrative remedy from Secretarial review or as the final administrative forum from Secretarial review under the Act. In this connection several points are noteworthy. Under section 11(d) of the Act, the Review Board has administrative authority to grant temporary relief from orders issued pursuant to sections 8 or 9 of the Act. Furthermore under section 11(e) of the Act, the Review Board is not bound by any previous findings of fact made by the Secretary. This in effect results in *de novo* proceedings before the Board. Finally while section 12 of the Act specifies that final orders of the Board are subject to review in the United States courts of appeals on the record made before the Board, the Act fails to provide for judicial review of Secretarial orders pursuant to section 9. Whether or not such review is provided under the Administrative Procedure Act is at least arguable since section 18 of the Act provides that: "The Administrative Procedure Act shall not apply to the making of any finding, order, or notice pursuant to this Act, or to any proceeding for the annulment or revision of any such finding, order, or notice" (emphasis added). Reading section 18 in conjunction with sections 9, 11, and 12 of the Act, it can be concluded that an operator must exhaust his administrative remedies by appealing to the Review Board in order to have his day in court.

While it is, of course, speculative as to whether or not an operator-plaintiff would be successful in making argument as outlined above against the Congress in its role of controlling the purse of the Federal Government or the President in his role as the appointer of the Review Board, it appears a more serious possibility that denial of statutory due process, although not caused by the Secretary (indeed the Secretary would have no authority to rectify such a denial), could result in inability to enforce any orders under section 8 or 9 of the Act. Such an occurrence would effectively destroy one of the keystones of the Act and could lead to needless tragedies in the mental and nonmetallic mining industry.

Sincerely,

ROBERT W. LONG,
Associate Solicitor,
Mine Health and Safety.

Senator PERCY. Finally, Congressman, do you agree Congress should act to abolish the Review Board as provided by S. 1774, then proceed to deal with the larger questions of mine safety raised in your comprehensive bill, H.R. 1661, and Senator Williams' bill, S. 1302?

Mr. HECHLER. Absolutely, yes. I would agree that Congress should move quickly. I am not sure we ought to have the functions of this Board transferred to Interior, because processes of appeal already exist.

I hope that this committee, in consultation with the Department of Interior, can arrive at a quick conclusion, and act quickly so we will not have to go through the appropriations process, and drag our feet any longer.

Senator PERCY. Have you ever found anyone in all of your inquiries that favored the Board, anyone that wanted to see the Board continue?

Mr. HECHLER. No. I have talked with many people on this issue. Most of the people that seem to favor the Board are really people that want to delay.

I cannot honestly say I have ever found a single individual that could give me any argument whatsoever for keeping the Board.

Senator PERCY. With a great deal of ingenuity and a tremendous amount of bipartisanship, we ought to be able to get rid of it.

There is a technical point you raised in your prepared testimony on page 5, where you raise objection to the way in which S. 1774 provides for appeal to the courts on a decision by the Secretary of Interior, through his board of appeals, on a closure order. I think we both agree on the purpose we are aiming at. If you have any alternate way of drafting this objective, could you submit alternative language to us at your convenience? We would be very happy to consider that.

Mr. HECHLER. I certainly will submit alternative language, Senator Percy.

[Material submitted for the record by Congressman Hechler follows:]

Chronology of the Federal Metal and Nonmetallic Mine
Safety Act of 1966 furnished by Congressman Hechler

CHRONOLOGY, 1966-1975

- 1966 - Passage of Federal Metal and Nonmetallic Mine Safety Act of 1966, which established the Federal Metal and Nonmetallic Mine Safety Board of Review
- July 30, 1971 - Activation and first meeting of the Board of Review.
- July 24, 1974 - In colloquy in House of Representatives, Rep. Hechler asks Rep. Julia Butler Hansen (D-Wash.), Chairman of House Interior Appropriations Subcommittee, why the Board shouldn't be abolished. Her response: "I would not object to the abolishing of the Board if that is the will of Congress." No action taken.
- October 8, 1974 - Federal Metal and Nonmetallic Mine Safety Board of Review holds its "annual meeting" in Las Vegas, Nevada, at a total cost to the taxpayers of \$1,885.99. Board debates whether or not to recommend it be abolished, and votes against abolition.
- January 13, 1975 - President Ford appoints Charles E. Schwab as a member of the Federal Metal and Nonmetallic Mine Safety Board of Review.
- February 3, 1975 - President Ford includes \$60,000 plus \$15,000 for transition period for Federal Metal and Nonmetallic Mine Safety Board of Review, salaries and expenses for fiscal year 1976.
- February 4, 1975 - Rep. Hechler writes letters to Senator Harrison A. Williams, Jr., and Rep. Carl Perkins, Chairmen of authorizing committees, urging abolition of the Board and rejection by Senate of nomination of Charles E. Schwab as a Board member.
- February 10, 1975 - Rep. Hechler delivers another in series of appeals that the Board be abolished, in address on floor of House of Representatives, stating, "it is outrageous that this Board should continue to exist and do absolutely nothing."
- February 20, 1975 - Rep. Hechler introduces H. R. 3431 to abolish the Board. Referred to Committee on Education and Labor.
- March and April, 1975 - Numerous conversations with staff of committees, and with United Steelworkers of America, attempting to move the legislation. Difficult to pinpoint responsibility.
- April 21, 1975 - Rep. Hechler writes to Hon. Dominick Daniels, Chairman of Subcommittee on Manpower, Compensation and Health and Safety of the House, and Hon. Sidney Yates, Chairman, Interior Appropriations Subcommittee, asking for opportunity to testify in support of abolition.
- May 9, 1975 - Visit to offices of Federal Metal and Nonmetallic Mine Safety Board of Review reveals office door open, telephone off hook, pile of Beethoven records, stereo, coffee machine, but no personnel present. Left after waiting 20 minutes.
- May 12, 1975 - Rep. Hechler testifies before House Appropriations Subcommittee, urging abolition of Board by cutting off appropriations.
- May 13, 1975 - Rep. Hechler writes another letter to Rep. Daniels urging abolition.

Chronology, 1966-1975 Continued:
Page - 2 -

May 14, 1975 - Associated Press account quotes Jubal Hale, Executive Secretary of Board, stating he feels Board should be abolished, and "there's nothing whatever to inhibit me from listening to Beethoven records. I think it's a good idea." Meanwhile, a spokesman for the Mining Enforcement and Safety Administration expressed surprise that the Board was still in operation. "I thought it had been abolished some time ago," he said.

House Appropriations Committee,
 May 21, 1975 - Rep. Hechler writes to Chairman Mahon, urging zero funds.

May 22, 1975 - Rep. Hechler delivers 15-minute address on floor of House, asking "How do you turn off the spigot?" Reps. Fenwick and Rousselot join in to support abolition of the Board.

May 23, 1975 - Rep. Hechler writes a letter to President Ford, urging abolition, and specifically asking President to direct Office of Management and Budget to advise House Appropriations Committee not to include funds in the continuing resolution.

May 27, 1975 - Assistant Secretary of the Interior Jack Carlson advises that he will not publicly support a request for funding of the Board. Office of Management and Budget staff indicate that it is really Congress, which authorized the Board, which should abolish the Board.

TABLE AFederal Metal and Nonmetallic Mine SafetyBoard of Review

Phone: 382-8303

Members of the Board and Affiliations

- A. Chairman, Dr. Howard L. Hartman, Dean of the School of Engineering, Vanderbilt University, Nashville, Tennessee.
- B. Peter J. Bensoni, United Steel Workers of America, Deluth, Minnesota, District 33.
- C. William W. Little, General Manager, Phelps Dodge Corporation, Douglas, Arizona.
- D. Robert W. McVay, United Steel Workers, Jefferson City, Missouri, District 34.
- E. Charles E. Schwab, President of the Golden Cycle Gold Corporation, Colorado Springs, Colorado. (Status--his term expired on September 15, 1974 and his renomination was submitted to the Senate by President Ford on January 16, 1975, and is pending before the Senate Committee on Labor and Public Welfare.)

TABLE B

Data Re: Meetings of Federal Metal and Nonmetallic Mine Safety Board of Review						
Date of Meeting	Place of Meeting	Summary of Matters Discussed	Members Present	Travel Costs	Salary @ \$50 per day	Total Costs
July 30, 1971	Wash., D. C.	Appointment of Executive Secretary and Secretary to Board and adoption of resolution giving Executive Secretary authority to act for Board on such matters as rents, utilities, expense accounts, printing, equipment, and other office services.	Messrs: Hartman; Bensoni; Little; and McVay	\$ 863.76	\$ 350.00	\$1,213.76
August 17, 1971	Wash., D. C.	Establishing Board's rules of procedure	Messrs: Hartman; Bensoni; Little; McVay; and Schwab (Mr. Schwab left early)	\$ 1,149.29	\$ 650.00	\$1,799.29
October 20, 1971	Wash., D. C.	(A) Heard a presentation from Interior official concerning mine safety inspection. (B) Consider comments on its proposed regulations and then adopted regulations. (C) General discussion	Messrs: Hartman; Bensoni; McVay; Schwab; and Little	\$ 661.09	\$ 400.00	\$1,061.09

TABLE B Continued:

Date of Meeting	Place of Meeting	Summary of Matters Discussed	Members Present	Travel Costs	Salary @ \$50 per day	Total Costs
Feb. 24, 1972	San Francisco, Calif.	(A) Discussed "what type of appearance should be made before" Congressional Committees and "what testimony should be offered in support of" Board's request for appropriations of \$167,000 for F. Y. 1973. (B) Approval of one-page annual report to Congress. (C) Consideration of Board's seal. (D) Discussion of Bureau of Mine's safety activities.	All	\$2,252.74	\$1,050.00	\$ 3,302.74
March 1, 1973	Chicago, Illinois	(A) Discussed "future status". (B) Budget estimates of \$160,000 for F. Y. 1974 and type of testimony before Congressional Committees on budget.	All	\$1,068.64	\$ 500.00	\$ 1,568.64
Sept. 7, 1973	Denver, Colo.	Preparation of estimated budget for F. Y. 1975 of \$90,000	All, but Mr. Bensoni	\$ 924.32	\$ 400.00	\$ 1,324.32
Oct. 8, 1974	Las Vegas, Nevada	(A) Discussed budget request of \$60,000 for F. Y. 1976. (B) Discussion of bills re: 1966 Act. (C) "General discussion" re: future of Board	All, but Mr. Schwab whose membership expired on Sept. 15, 1974	\$1,485.99	\$ 400.00	\$ 1,885.99
				\$8,405.83	\$3,750.00	\$12,155.83

TABLE C

Federal Metal and Nonmetallic Mine Health and Safety Closure Orders*

<u>Dates</u>	<u>Imminent Danger</u>	<u>Non-Imminent Danger</u>	<u>Total</u>
1972	151	65	216
1973	475	471	946
1974	1,032	839	1,871
Totals	1,658	1,375	3,033

*Information supplied to Congressman Hechler on May 29, 1975 by the Mining Enforcement and Safety Administration.

IN HOCHLER
DISTRICT, WEST VIRGINIA

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242 CANNON HOUSE OFFICE BUILDING
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DIANN MCCORMICK
SUSAN ROSS
VIRGINIA SKEEN

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Congress of the United States
House of Representatives
Washington, D.C. 20515

May 13, 1975

COMMITTEE 186
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Honorable Dominick V. Daniels
Chairman, Subcommittee on Manpower,
Compensation and Health and Safety of the House
Room B345A Rayburn Bldg.

Dear Mr. Chairman:

Yesterday I testified before the Subcommittee on Interior and Related Agencies of the House Committee on Appropriations and urged rejection of the Administration's request of \$60,000 for Fiscal Year 1976 and \$15,000 for the transition period for the Federal Metal and Non-Metallic Mine Safety Board of Review.

As you know, I have introduced H. R. 3471 to abolish the Board legislatively. I urge that your Subcommittee hold hearings on this bill and report out such legislation this Fiscal Year. Such action need not wait for broader legislation to amend the Federal Metal and Non-Metallic Mine Safety Act of 1966, which I have introduced and which I know you are considering.

This five-member, part-time Board has been in existence since July 31, 1971, to hear and decide appeals by mine operators concerning imminent danger closure orders issued by Federal inspectors pursuant to section 8 of the Federal Metal and Non-Metallic Mine Safety Act of 1966. (A list of the members of the Board is attached.) But there have been no appeals since 1971 for the Board to consider, although there have been about 4,000 closure orders since 1971. The Board has done nothing constructive since 1971, except to hold an annual meeting so, as its Executive Secretary said to the House Appropriations Sub-Committee earlier this year, its members "won't become too estranged."

Honorable Dominick V. Daniels
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The Board occupies a plush corner suite of offices on the seventh floor of the Universal Building, located at 1875 Connecticut Avenue, N.W., next to the fashionable Washington Hilton Hotel in the District of Columbia. The General Services Administration has paid \$4,087 annually since September, 1970, for this suite and will continue to do so until November 14, 1979.

I visited those offices last Friday with a member of my staff at about 11 A.M. When I entered the anteroom, I noticed no secretary, but the drawer to the desk was wide open and the phone was off the hook. After patiently waiting for over five minutes for someone to return to the desk, we ventured to the rear offices.

In the first room, there was a table, several chairs, a coffee pot, and a stack of stereo records, but no personnel. We then entered the main office. We found Friday's Washington Post laying casually on the floor near a very nice couch, a table with a stereo record player and speakers, and a desk with someone's eye glasses laying on its top, but no personnel.

Indeed, this plush, open suite was unoccupied. We waited in the anteroom for several minutes more and then left. Apparently, the Board's Executive Secretary, who is a GS-12, Step 3, (\$19,693) and his secretary, who is a GS-9, Step 4, (\$14,125) had stepped out for refreshments, as an escape from their boredom, but left the phone off the hook to give the impression that they were hard at work earning their salary. Obviously, they never expected visitors or they would never have left the door open.

I understand that the Board met on October 8, 1974, to discuss whether or not to recommend its abolishment to Congress, but decided against it. Obviously, this Board and its staff are not willing to give up this good thing. The meeting was held in Las Vegas, Nevada, in conjunction with an American Mining Congress meeting. The meeting cost the taxpayers \$1,885.99.

The Board is not needed. In many cases, closure orders are for a few hours or days and the inspectors, after reinspection, reopen the mine, or portion thereof, if the danger has been remedied. This procedure is favored by the operators because it insures that the mine, or portion thereof, will be opened immediately after abatement of the danger. An appeal could take weeks and, in the meantime, the mine, or portion thereof, is closed and is non-productive.

Honorable Dominick V. Daniels
Page - 3 -

Additionally, the Act provides for an appeal and decision by the Secretary.

The Department has established the Board of Mine Operations Appeals within Interior's Office of Hearings and Appeals, (43 CFR, 4.650). Indeed, this Interior Board received its first appeal on March 17, 1975, (IBMA-75-M-1, Grand Rapids Gypsum Co.). On April 29, 1975, Interior's Board denied the appeal for failure to file papers timely, saying that the conditions cited by the MESA inspectors "existed on the date of inspection and constituted imminent danger." I understand that the company has decided to abate the violation which renders the appeal moot.

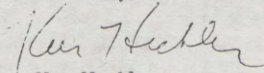
The Act states that the operator can appeal the decision to the Board and then to the United States Court of Appeals. I am convinced, however, that if Congress terminated this Board by failing to fund it, an appeal directly from the Secretary would be entertained by the Secretary. Thus, on the oft chance that some operator might appeal a closure, there is an adequate procedure to handle that appeal without this Board.

Since June, 1972, I have urged that the Appropriations Committee not fund this Board which performs no useful function, except to keep two people on the Government payroll. Each time that Committee has been sympathetic and agreeable to the idea, but has not taken this step since the legislative committee had not abolished it. In the meantime, we are wasting several hundred thousand dollars on this useless and do-nothing Board that could be better spent on improving the safety of these mines.

We must abolish this Board this Fiscal Year. I urge that your Subcommittee do so.

Best regards.

Sincerely,



Ken Hechler

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Congress of the United States

House of Representatives

Washington, D.C. 20515

May 23, 1975

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The President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

On January 16, 1975, you submitted to the Senate the nomination of Mr. Charles E. Schwab, President of the Golden Cycle Gold Corporation in Colorado, as a reappointment to one of the two industry positions on the Federal Metal and Nonmetallic Mine Safety Board of Review.

In addition, your February 3, 1975 budget message to Congress included a request to fund, in fiscal year 1976 and the transition period, the Board of Review. The total sum requested was \$85,000.

Prior to both of these actions, the Executive Secretary of the Board filed his annual report to Congress saying in less than one page that its activities in calendar year 1974 added up to zero.

Similar reports have been filed by the Board in 1972, 1973, and 1974.

Clearly this do-nothing, useless Board should be abolished now. It is not needed as my enclosed letter to Congressman Dominick V. Daniels indicates.

Within the next few days, the Office of Management and Budget will be advising the House Committee on Appropriations on the framing of a continuing resolution to allow the various Federal agencies to

The President of the United States
May 23, 1975
Page Two

operate pending enactment of their annual appropriations bills. I urge that you instruct the OMB to recommend that the resolution not apply to this Board of Review. I also urge that you promptly order the termination of this Board in this fiscal year and that you withdraw Mr. Schwab's nomination.

Such actions would certainly be in the public interest.

Sincerely,

KEN HECHLER

Encl.

:pdc

Chairman RIBICOFF. I think we can get the staff and Interior to work together on that.

Thank you very much, Congressman Hechler.

We have our colleague here. We are always delighted to hear from Senator Metcalf.

Senator Metcalf, my understanding, for the purpose of television cameras, is that you prefer not to have to testify with the lights on. Since this is the prerogative of a witness, we will have to turn off the lights during Senator Metcalf's testimony. Then they can be put back on when the other witnesses are here.

TESTIMONY OF HON. LEE METCALF, U.S. SENATOR FROM THE STATE OF MONTANA

Senator METCALF. I do not mind if the lights are on, as long as they are not shining right at me.

Senator PERCY. Is this evidence that you yourself shed enough light so that you do not need extraneous exterior lighting?

Senator METCALF. I doubt with my past experience on this committee that I can shed enough light to be persuasive on this particular issue.

I have just picked up this question of Senator Percy's bill for the elimination of the Metal and Nonmetallic Mine Safety Board of Review. I must apologize to my colleagues that I have not had an opportunity to do thorough research. I have been concerned with another mining problem that may have ended yesterday. I do not know. That is the the surface mining bill on which the House failed to override the veto.

But I have been concerned, Mr. Chairman, in this area ever since I came to Congress. My papers have mostly been given to the Montana Historical Society. I have been unable in the few days to go back to my early files when I was a Member of the House of Representatives. But I came to Congress and was on the Education and Labor Committee. I recall that either in my first or second term, the chairman of that committee created a special Nonmetallic Mine Safety Subcommittee. As I recall, it was Congressman Rhodes of Arizona, Carl Elliot of Alabama, and Congressman Landrum of Georgia; and I was chairman. We held hearings all over the United States on this very issue, metallic and non-metallic mine safety.

I was either the sponsor or cosponsor of the original bill. As I recall—and I have not been able to dig up all the legislative history—when this bill passed the House, it did not contain this provision for the Metallic Mine Safety Review Board.

It was in the Senate under the leadership of the late Robert Kennedy, and at the request of mine management, that this was put in, modeled after, and I am just groping here—I hope I will be able to correct my statement later—modeled after the Coal Mine Safety Act that had just been passed by the Congress.

I give this preliminary statement to show that I have been interested in and concerned with coal mine safety and metallic and nonmetallic mine safety for a long time. In my State, we now have open pit mining almost completely in the Anaconda Co. operations, and we do not

have very much underground mining. I have failed to give it the proper attention over the years, but during the recent recess, Mr. Chairman, I had occasion to drive from Spokane, Wash., to Missoula, Mont., and went past that memorial they have on the highway near Kellogg, Idaho, as a tribute to the miners that were killed in that Sunshine Mine disaster. That points up to me the real issue this bill raises.

Again, as I say, I compliment the Senator from Illinois for introducing the bill. But there were 91 men killed in that mine in Kellogg in 1972. There has been disaster after disaster since the passage of this Federal Mine Safety Act. The question is the enforcement or the modification or the correction of that act. I want to give some examples.

Suppose there are muggings and assaults and robberies, burglaries on the streets, and you have no policemen and have no arrests. Do you discontinue the court, or do you put a policeman on the beat? I was talking to someone about this bill. He said, "We can't be concerned about the bad tuning of Nero's fiddle when we ignore the burning of Rome."

It seems to me, Mr. Chairman, that this bill is purely cosmetic. The real question is to get some mining inspectors out there inspecting the mines. If they do a job, perhaps there will be a need for and some work for this board. I think it is outrageous, both in the coal mining area and in the metallic and nonmetallic hard rock mining area that we continue to have miners, hundreds of them, killed every year. We have inadequate inspection and inadequate numbers of mine safety inspectors which are now just as important as policemen on the street. There were 392, almost 400 miners killed in 1972 in spite of the passage of this act.

So I think it is awfully important that this bill has called attention to the failure of the system and the failure of the Congress to appropriate enough money to either carry out the provisions of the safety act or amend the act so it is adequate and will take care of the people.

Chairman RIBICOFF. I think before you came in, it was pointed out that I am a cosponsor of the Williams bill which really encompasses what you would like to achieve. I would like to achieve that, too. I would hope that the Labor Committee would move along that line.

Senator METCALF. I would hope so, too. Of course, I think that the attention that this bill has created has caused people to all at once be aware of the need. I merely want to point out, Mr. Chairman, that you do not get rid of the court when you do not have policemen making arrests. You do not get rid of the agency that is supposed to be appeal agency when you have nothing in the enforcement of legislation from which to appeal.

As I say, in a bill of which I was either the principal sponsor or cosponsor, we did not have this intermediate Mine Safety Review Board. We had an appeal to the Secretary. After that, an appeal to the court. As I recall, it was the Senate Labor Committee that put in this board, to make it coincide with the Coal Mine Safety Act.

I really think there could be an adequate appeal, Mr. Chairman, without this intermediate board. It was in conferences, again, a long time ago, 1956, I started to work on this some 20 years ago. As I say, my files are in Montana from when I was in the House of Representatives, and I just have not had enough time to research them.

Chairman RIBICOFF. Thank you.

Senator PERCY. Senator, is it not true that we really now have two appeal agencies, and that while we do need an appeal agency, we really need only one, not two? The Interior Department's office of hearing appeals is there for that purpose.

Senator METCALF. That is right. As I say, I am not just sure. We did not have it. I do not know whether we need such a board in the Coal Mine Act, although I do not know whether it is in 1302, of which I, too, am a cosponsor, because of my feeling that there is just a lack of enforcement and lack of inspectors.

Mr. Chairman, I only want to point out that this hits the problem with a powder puff. Maybe it is important to not let the sun set on a board that you feel is no longer useful and that we should, in the full committee, report this out today. But the main thing is that the reason that there are no appeals, as I see it, is that there has been inadequate inspection up and down and back and forth across this country, and the failure of the department with its handful of inspectors to carry out the will and intent of Congress and the need of the labor and management people of America to have adequate mining inspection and cut this slaughter that we have in the coal mines and hard rock mines of America.

Chairman RIBICOFF. Thank you very much.

If there are no questions, Senator Percy.

Senator METCALF. Mr. Chairman, may I, with greater preparation, file a formal statement?

Chairman RIBICOFF. Certainly. It is always welcome.

[EDITOR'S NOTE.—The statement was submitted in the form of "Supplemental Views" and printed in the report to accompany S. 1774.]

Chairman RIBICOFF. Mr. Jubal Hale.

TESTIMONY OF JUBAL HALE, EXECUTIVE SECRETARY, FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

Mr. HALE. Good morning, Mr. Chairman. Could I have the lights out, please?

Chairman RIBICOFF. At the request of the witness, the lights will please be turned off.

Mr. HALE. Could I submit my statement and summarize?

Chairman RIBICOFF. Without objection, your statement will go in the record as if read.

Mr. HALE. The position of the board is briefly this. As far as the members of the board are concerned, they neither support nor oppose any action the Congress wishes to take on mine safety legislation. It is that simple.

Now, if I could maybe clear up one point that is not understood here, the board is the principal administrative remedy to an operator whose mine has been closed. This other appeal you talk about to the Secretary of Interior is merely a provision in the act, and it is optional. It does not have to be exercised. It is purely optional.

It allows the mine operator to have his mine reinspected by a team of inspectors which does not include the original inspector. I think the fact that we have had no cases is truly amazing. I think it is much

more amazing that only one operator has ever, since we have been in existence, walked up to the district office and said, "I would like to have my mine reinspected."

That has only occurred on one occasion, and that was about 2 months ago.

Chairman RIBICOFF. Mr. Hale, as I gather, your personal view is that the Board should be abolished, is that correct?

Mr. HALE. Mr. Chairman, I think that things have gotten to a point now, just speaking personally—

Chairman RIBICOFF. I understand that.

Mr. HALE [continuing]. Not in the board's view. You really have no other choice.

But I wish to qualify that opinion and make it clear, the men on the board are men of the highest caliber, most able. They are not going to be duplicated in the bureaucracy. So in a sense you are going downhill. But I think things have gotten to a state now where you have to go downhill whether you want to or not.

Chairman RIBICOFF. Senator Percy, do you have a question?

Senator PERCY. Yes, I have.

Mr. Hale, the review board has been criticized, as you know, for the size of its yearly appropriations in view of the fact the board has never reviewed an appeal of a mine closure order. Could you tell us how much has been appropriated over the years?

Mr. HALE. A lot has been appropriated, but we have never spent all of our appropriations. We have always returned money back. For instance, last year we had a \$60,000 appropriation and spent \$40,000. This year we have a \$60,000 appropriation; as of the end of May, we have spent \$41,275.

Senator PERCY. Can you give us a total as to how much this board has spent since its inception?

Mr. HALE. Offhand, I cannot.

Senator PERCY. Can you provide that?

Mr. HALE. I certainly can. It would be approximately \$200,000.

Senator PERCY. \$200,000?

Mr. HALE. Yes.

Senator PERCY. Can you tell us essentially what the money was spent on?

Mr. HALE. Yes, I certainly can. Salaries are our big item. Let me give you a rundown on what we have spent the \$41,000 on so far this year. I think that will give you a good idea of what it has been spent on in other years.

On salaries, \$30,986; benefits, \$2,929; travel, \$15,094; rent, \$3,195.

Senator PERCY. What is the yearly rent for the office complex you had on Connecticut Avenue?

Mr. HALE. I read in the paper it was \$4,000 and something. I thought it was about \$5,000. It is a little lower than I thought.

Senator PERCY. About \$4,000 or \$5,000, then.

Mr. HALE. Yes.

Senator PERCY. Can you describe how the different rooms in the office suite are used?

Mr. HALE. We have three rooms, altogether. We have one very small reception room; one room we use for storage and coffee making.

Senator PERCY. For what?

Mr. HALE. Coffee making.

Senator PERCY. I see.

Chairman RIBICOFF. And a record player.

Mr. HALE. No, that is in the big office.

Then we have a large office that can be used as a meetingroom, or something, in case the board would wish to meet here in Washington. There are about 670 square feet altogether.

Senator PERCY. In your yearly report you make to Congress on the "work" of the review board, how have you explained the inactivity of the board to Congress?

Mr. HALE. We have not been able to explain it. I testified at both appropriations hearings this year, and I had to admit I did not know. I do not wish to, you know, imply anything against anybody. On the same line, I might say that the members of the board have always told me, "Hale, file a 1-page report so nobody can miss it."

They think that is very significant information, the fact that we have had no appeals.

Senator PERCY. Unprecedented.

Did you submit a much lower budget request after the first or second or third or fourth year of no business?

Mr. HALE. No. Actually, there is a big delay on your budget. You figure them out a year in advance to when you get around to approving them.

Technically, we were cut down by the committee. But I must say that before we were cut down we still had \$160,000 budget. We were already in the process of reducing our space and giving up a lot of it. Also we had given up a copy machine. So while our budget requests may not look so good, the actual operations of the board, I think, look very good in that we have just been pulling in our horns, getting smaller and smaller and smaller.

Senator PERCY. Have you taken any initiatives on your own concerning the elimination of the board or investigating the lack of appeals?

Mr. HALE. Senator Percy, of course, we talked to Interior. We talked to the Senate Labor Committee. That is about where we get all our explanations.

As far as elimination of the board is concerned, this matter came up at our last meeting in Las Vegas in October—October 8—of last year.

Chairman RIBICOFF. Why did you have to have a meeting in Las Vegas?

Mr. HALE. It was held in connection with a professional society meeting, and our members do not live here. They reside all over the country, you see. This really was the principal order of business. The chairman wanted to file a brief report with Congress giving a little history of the act and stating we had not had any business, and that perhaps Congress should consider its abolishment.

The other four members opposed this. They opposed it because they just wanted to preserve the position they had always taken, that they were not going to get involved through the board in the forming of mine safety legislation. Also, I think they were concerned because it was uncertain what this action would have on certain legislation

that had been pending before Congress for over a year. Particularly, our union members had that concern. I think they were very worried that Congress might be sidetracked on something like this and not consider that legislation which they considered very important.

Senator PERCY. Mr. Hale, have you appeared before any other congressional hearings on this particular subject?

Mr. HALF. Oh, yes. We were investigated quite thoroughly in 1973 by the House Appropriations Committee. I think the quote Congressman Hechler gave about when I was asked what we did was from some material I had furnished that committee.

I was requested to be before the committee. When I got over there, not only did nobody ask me any questions, they did not even acknowledge my presence. The chairman went off on one of these diatribes I have been speaking of. He seemed to think we were part of the Department of Interior. He wanted OMB to abolish us. So I wrote a letter to the chairman explaining that OMB could not abolish us. It has to be Congress. We are so integrated into the act that we just cannot be not funded. We have to be abolished, and the act has to be restructured like you are attempting to do here today, or the act will not be operational, in my opinion.

Senator PERCY. Mr. Chairman, I would ask unanimous consent that we insert in the record a statement of Congressman Henry Reuss of October 31, 1973, before the Conservation and Natural Resources Subcommittee of the House Committee on Government Operations.

If Mr. Hale has no objection, also a letter dated November 1, 1973, from Mr. Hale to Congressman Reuss concerning the Congressman's statement.

Chairman RIBICOFF. Without objection, so ordered.

[Statement of Representative Henry S. Reuss and letter from Mr. Hale to Congressman Reuss follows:]

STATEMENT OF
Rep. Henry S. Reuss
Chairman

Conservation and Natural Resources Subcommittee
of the
House Committee on Government Operations

At Hearings On

WHETHER FEDERAL MINE HEALTH AND SAFETY LAWS
ARE BEING EFFICIENTLY AND EFFECTIVELY ADMINISTERED

October 31, 1973

From January 1, 1970, to October 25, 1973, 711 coal miners died in our Nation's deep and surface coal mines. During this same period, another 706 miners died in the Nation's metal and nonmetallic mines. Thousands more in both of these industries have been injured, in some cases permanently.

Congress enacted two major laws in the sixties to prevent this unwarranted slaughter and injury of a significant portion of our Nation's workforce. Both are administered by the Interior Department.

One is the Federal Metal and Nonmetallic Mine Safety Act. This law was enacted in September, 1966, but the Interior Department did not start enforcing the law until July 31, 1970.

The second is the Federal Coal Mine Health and Safety Act of 1969, enacted in January, 1970. Now, four years after its enactment, the administration of this Act is steeped in controversy and, the Department's penalty-assessment program is, as its Administrator has described it, "a mess".

Today we begin hearings to learn why these laws have not achieved their purpose to insure safe and healthful working conditions and to prevent loss of life and limb.

A. The Coal Mine Statute

The 1969 law requires mandatory assessment of civil penalties of up to \$10,000 against coal operators who violate mandatory health or safety

standards and up to \$250 against anyone who smokes or carries smoking materials underground. Since March 30, 1970, when procedures for assessing these fines were first established, over \$25.5 million of civil penalties have been assessed, but only \$5.1 million have been collected. Some of the coal producers leading in fatalities for 1971, 1972, and 1973, such as Consolidation Coal and Island Creek Coal (which are owned by oil companies) and Pittston Coal have been assessed huge sums in civil penalties but have paid little or nothing.

Two regulations adopted by Interior in 1970 and 1971 establishing assessment procedures were invalidated by Federal court decisions.

In September, 1971, our Subcommittee asked the General Accounting Office to investigate the Department's penalty assessment program. The GAO's July, 1972, report enumerated deficiencies in this program, particularly in the collection of fines once assessed.

The GAO report also pointed out that the Interior Department lacked written guidelines (a) "defining" six statutory factors which must be considered in determining the "amount" of a fine, and (b) "describing the consideration and weight given each" factor. The GAO noted that "no documentation existed showing how or even whether the six factors were considered" by the assessors.

Last March, Federal District Judge Aubrey E. Robinson said that "assessment orders seem to issue forth on a mass production basis from a clerical machinery completely divorced from any genuine process of considered determination as to each case." He ruled that under the 1969 law, before such assessments can become final --

"...the Secretary must (1) meaningfully consider the six statutory criteria for penalty assessment, (2) make express determinations thereon with regard to the amount of the penalty which is warranted, and

(3) make express determinations that a violation did occur. Express determinations are to be made 'by decision incorporating his findings of fact therein'."

There is now a backlog of over 60,000 unassessed violations. For more than 16 months now, the program has functioned without a permanent Chief Assessment Officer, and a new Acting Assessment Officer was appointed just two weeks ago. Interior currently has 23 assistant assessors, and earlier this month asked Congress for funds to hire another 23. In addition, Interior has assigned 53 coal mine inspectors to perform the assessment function. Their assignment appears improper on three grounds:

First, the inspectors are not trained to consider and assess civil penalties.

Second, they are acting in the dual role of policeman and judge.

Third, the inspectors are needed to inspect mines to insure compliance with health and safety standards during this winter period when mine explosions are prevalent.

We are also concerned about the backlog of assessments at the hearing level. At present, there are only 14 attorneys and the equivalent of 17 hearing officers handling assessment cases. Yet, apparently no effort is being made to hire sufficient trial attorneys and hearing officers.

Last March, Judge Robinson suggested an alternative assessment procedure which would provide opportunity for informal, as well as formal, procedures. Interior rejected his suggestion, appealed his ruling, and last April proposed interim procedures without any opportunity for public comment.

These procedures require that the Department's Solicitor's Office file a petition based on data prepared by the Assessors, with Interior's Office

of Hearings and Appeals. This petition triggers a formal procedure, including hearings, by hearing officials.

Since this procedure was initiated, 649 petitions covering several thousand violations were filed with this office. As of October 1, only 14 petitions had been decided and 589 petitions have not yet even been assigned to one of these hearing officials who, according to GAO, already have a backlog of over 2,000 cases. The GAO informs us that these officials resolve about 74 cases per month, and that at this rate it will "take over 3 years to resolve" the backlog, even if no new petitions are filed from now on.

We are concerned that Interior's interim procedures - which, according to the Government's brief on its Appeal from Judge Robinson's decision, Interior apparently wants to make permanent - will cause a need to hire many additional hearing officials, each at salaries averaging at least \$33,000 annually. We want to know why Interior refuses to adopt some informal procedures with adequate safeguards, as suggested by Judge Robinson, to help resolve these cases at the assessors' level.

We also want to know why, and on what legal basis, the Department has decided, in its guidelines for assessments, to limit all civil penalties to a maximum of \$5,000, even though the 1969 Act sets the maximum at \$10,000.

B. The Metallic Law

Interior has hired over 1,000 inspectors to enforce the 1969 law at 3,100 coal mines. But as of October 1, it has hired only 153 inspectors to enforce the 1966 law at over 13,000 metal and nonmetallic mines, and anticipates hiring only about 70 more inspectors this fiscal year. When we see that there were 711 fatalities at coal mines and 706 fatalities in metallic and nonmetallic mines, we think there ought to be more inspectors hired at the latter mines. What is the Department doing to increase the inspection force?

What is the usefulness of the Federal Metal and Nonmetallic Mine Safety Board of Review, which was created by the 1966 law to review applications "for annulment or revision" of mine closing orders? The present five members of this Board are not permanent Federal employees and consist of:

One university professor;

Two businessmen from the mineral industries; and

Two representatives of the Steelworkers Union.

Although the Board was created in 1966, it did not begin to function until July 31, 1971. In the two fiscal years 1972 and 1973, it held a total of only 3 meetings. We understand the Board has no applications for review now pending before it.

The President's 1974 Budget requested a \$160,000 appropriation for this Board, including a request for 5 full-time and 3 part-time employees. Fortunately, the Congress cut this request to only \$60,000.

Shouldn't this "do-nothing" Board be abolished? It serves no useful safety purpose. It is a drain on the taxpayer. I hope the Interior officials here today will carry this message back to the Office of Management and Budget.

Federal Metal and Nonmetallic Mine Safety Board of Review

1875 Connecticut Avenue, N.W., Suite 707
Washington, D. C. 20009

November 1, 1973

Honorable Henry S. Reuss
Chairman
Conservation and Natural Resources Subcommittee
of the Committee on Government Operations
Rayburn House Office Building, Room B-349-C
Washington, D.C. 20515

Dear Congressman Reuss:

Your comments in your opening statement at the hearing held October 31, 1973, by your Subcommittee on the administration of Federal Mine Health and Safety Laws as they pertained to the Federal Metal and Nonmetallic Mine Safety Board of Review both concerned and puzzled me.

In your opening statement, you refer to the Board and state, "Shouldn't this 'do-nothing' Board be abolished? It serves no useful safety purpose. It is a drain on the taxpayer. I hope the Interior officials here today will carry this message back to the Office of Management and Budget." Despite what you may have heard, we are an independent agency and not part of the Department of the Interior. Also, I do not understand how OMB could abolish the Federal Metal and Nonmetallic Mine Safety Board of Review.

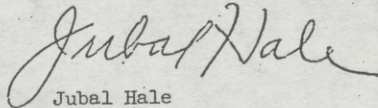
Your statement caused me concern because I have advised this Board that the sections of the Federal Metal and Nonmetallic Mine Health and Safety Act of 1966, which created the Board, are not severable from the rest of the act and, though our Board has had no cases, it cannot be abolished until Congress passes legislation repealing or restructuring the present act. I have based my opinion on two considerations: (1) the act as it now stands guarantees to any mine operator whose mine is closed by virtue of a closure order an opportunity to appeal to the Board, and (2) mining is a very legitimate activity and the Government can close a mine only for valid reason and according to due process of law. It is our Board that offers the mine operator his principal administrative remedy, and it is before our Board that a record may be made on which an operator can pursue further appeals to the courts.

You have criticized our budget request of \$160,000 for Fiscal Year 1974 as being way too large. I would like to point out that \$160,000 was the amount of our appropriation for Fiscal Year 1973. In that year, we spent only \$50,489, and \$109,511 of our budget lapsed. This certainly must have set a track record for frugality in Government, at least in Washington. As far as I am able to see, the worst that came of this excess appropriation was that \$109,511 was returned to the Treasury and the U.S. budget deficit was reduced by that amount.

There are presently three bills that have been introduced in the Congress concerning safety in the metal mine industry and I expect that a fourth bill, which has already been drafted by the Department of the Interior, will soon be introduced. These four bills are all quite different, but they have one thing in common. They all do away with the Federal Metal and Nonmetallic Mine Safety Board of Review. However, each of these bills contemplates that there will be another Board, which will replace the present Board, and so it goes.

The Members of the present Board regard their tenure on the Board as a public service. I believe their salaries in 1972 totaled about \$1,000. Each of them has had many years of experience that qualifies them to be Members of the Board and they are very serious minded about their service on the Board. They are very conscious of the fact they are serving on a Board that, after more than two years, has yet to hear or decide a case. I am forwarding a copy of your opening statement as it pertains to our Board to each of the Board Members and I am sure that they will give serious consideration to this and any further comment you or any other Member of the Subcommittee may wish to make concerning the Board.

Respectfully yours,



Jubal Hale
Executive Secretary

copies to -

Congressmen Moss, Fascell, Hicks, Ryan, Fountain, Brooks, Vander Jagt,
Gude, McCloskey, Steelman, Pritchard

Senator PERCY. Also, Mr. Chairman, I would offer for insertion a series of articles, one from the Washington Post, May 29, with the headline, and I am sorry we cannot print the picture, "Hechler Fails To Kill Panel."

Wall Street Journal editorial of June 3, entitled "Padding the Payroll," and the El Paso Times, "The Bureaucrat May Lose Beethoven."

Chairman RIBICOFF. Without objection, so ordered.

[The articles follow:]

[From the Washington Post, May 29, 1975]

HECKLER FAILS TO KILL PANEL

Attempts to abolish a federal appeals board—which has heard no appeals—are being ignored by both the White House and Congress, says a congressman who wants to do away with the panel.

"Everybody agrees it ought to be abolished. But everybody passes the buck when it comes right down to taking the action necessary to abolish the board," Rep. Ken Hechler (D-W.Va.), told a news conference Tuesday.

For the past two years Hechler has headed an unsuccessful campaign to abolish the Federal Metal and Non-Metallic Mine Safety Board of Review, which was set up four years ago to hear appeals from noncoal mine operators ordered to shut down by the Interior Department for violating federal safety regulations.

While there have been nearly 4,000 such orders in the past four years, none has ever been appealed to the board.

Hechler said that despite the board's inaction, President Ford has requested \$60,000 for its continued operation for the fiscal year that begins July 1. Hechler said he will move to strike funding for the board and its \$19,643-per-year executive secretary when Congress considers an appropriations bill next month.

Even the board's executive secretary, Jubal Hale, has said that the five-member board would not object if Congress decides to abolish it, Hechler said.

In a recent interview, Hale said he has so little to do that he kills time by listening to Beethoven records in his office and reading.

Hechler is proposing legislation to abolish the board and switch jurisdiction for all mine safety enforcement from the Interior Department to the Labor Department.

Board members are not paid, but the government pays the salary of Hale and his \$14,125-per-year secretary, spends \$4,087 annually to rent a Washington office, and picks up the tab for travel and various other expenses of board members.

Hechler said taxpayers paid \$1,886 last year for the board to hold an "annual meeting" in Las Vegas, a meeting at which he claims there was nothing to discuss.

A similar proposal to abolish the post came last week from Sen. Charles H. Percy (R-Ill.). Responding to Percy's bill, Hale told a reporter that if it wants to, Congress should go ahead and abolish the board and his post.

In fact, Hale said, he can't understand why it has taken Congress so long to get around to doing it.

[From the Wall Street Journal, June 3, 1975]

PADDING THE PAYROLL

Jubal Hale loves to read and listen to Beethoven records, and the beauty of his job is that he is able to indulge both passions while being paid \$19,693 a year. The reason is that Mr. Hale works for the federal government—well, not works, exactly, but he is executive secretary of the Federal Metal and Non-Metallic Safety Board of Review. The board hasn't had anything to review in its four years, according to the Associated Press, but the President's budget for fiscal 1976 nevertheless calls for \$60,000 in annual upkeep for the office.

Good paying jobs that don't require any duties are not exactly unknown in government, particularly in the federal government with its maze of boards, committees, panels, consultants and commissions. But it's beginning to look as though Washington may lose its preeminence in the field of patronage to New

York State, whose Assembly is making a gallant effort to overtake the nation's capital.

Despite a state budget squeeze, the Assembly payroll has tripled to 1,882 new employees just since January. A good many of the positions—we hesitate to call them jobs—are in the \$20,000 salary range, but many also fall into the \$30,000 and \$40,000 brackets. Some involve minor duties, but most are simply patronage positions no more demanding than Mr. Hale's nonexistent tasks. To put this into somewhat clearer perspective, the state Executive Department last month cut more than 500 permanent workers and just recently announced more than 800 additional layoffs.

The major difference between Jubal Hale's sinecure and that of the New York no-shows is that Mr. Hale does not pretend that his or the safety board's functions are of any value. "We have been extremely candid with Congress," he said. "Our annual reports are clear and concise. We have had no cases." But many of the absentee New York jobholders contacted by The New York Times attempted to justify their appointments, although few could point to any real duties or accomplishments.

This is perhaps one approach toward solving the unemployment problem, or would be if so many of the New York "consultants" and "public relations" helpers were not otherwise employed or politically well-connected. Moreover, New York's employment problem is a lack of jobs in the private sector, not in the already topheavy public sector. So this exceptional generosity on the part of the State Assembly would not seem to be the economic shot-in-the-arm that was intended—at least we think it was so intended—otherwise how account for padding state payrolls at a time when the state is already having trouble making ends meet?

[From the El Paso Times, May 22, 1975]

BUREAUCRAT MAY LOSE BEETHOVEN

WASHINGTON (AP).—The idle bureaucrat who spends his days listening to Beethoven soon may find himself pounding the pavement looking for work.

Sen. Charles H. Percy, R-Ill., has introduced legislation to abolish the Federal Metal and Non-Metallic Safety Board of Review, a panel that has not had any work in its four years of existence.

Jubal Hale, executive director of the board, recently told reporters he spends his days listening to Beethoven because the board has never heard a case. Hale's salary is \$19,693.

The board was created in 1971 to hear appeals from noncoal mine operators ordered to shut down for violation of federal safety requirements.

Percy also asked the General Accounting Office, an investigatory arm of Congress, to review the over-all process of mine closures and appeals.

"I find the absence of appeals rather curious and I wonder if this is an indication that the procedures ordering mine closures is too lax," Percy said.

A bill to abolish the five-member board and the office of executive secretary has also been offered in the House by Rep. Ken Hechler, D-W. Va.

Hale responded to Percy's bill by saying, "We're not here to tell Congress to pass or not pass it. Tell them to go ahead, if they want."

He noted that other bills have been introduced in others years to do the same thing, but that none has ever passed.

If Congress decided to abolish the board and his job, "this board is not going to object," Hale said.

Hale said his four years in the post have been "very discouraging to me. When I came on, nobody anticipated it would end up like this."

Asked if he considered quitting and taking a job that was more challenging, Hale told a reporter: "No comment."

He said investigators from the General Accounting Office already have visited his office, but he doesn't know who sent them. Hale said he welcomes any investigation since he has always been candid with Congress and the administration.

Hale said he's ready to earn his salary, and that it isn't his fault there have been no mining appeals to hear.

Senator PERCY. Do you see any reason to continue the board other than so you can continue to pursue the development of your own mind by reading and of your cultural habits by listening to Beethoven?

Mr. HALE. I think you must understand this. As I have told Senator Ribicoff, I do not think you have any choice now but to abolish the board. But you have to substitute something in its place. You should not have the idea that you are doing anything as surgical as you seem to think you are.

In other words, you are changing the review board from Connecticut Avenue over to Arlington, Va., I suppose is what it amounts to. If I could make any further comment on this, I do not want to say anything negative because I want you to do it as quickly as you can. But as Senator Ribicoff I'm sure knows, one of the new concepts in mine safety legislation is the idea of an omnibus act.

Now, this concept among mining people, and I am no mining expert, is not like you would think. It is not like an omnibus housing act, just an effort to treat everybody equally. It is a very controversial concept in the industry. It has an awful lot going for it, and it is an awfully good idea. But it is controversial. It has to do with asking men to make distinctions and categorizations the way they are not used to and maybe do not want to.

I do not know just what is going to happen over at Hearings and Appeals, but some of the comments I have heard today would indicate that perhaps this is the creation of an omnibus board. I just wonder if it should be handled in the kind of offhand manner like this.

In other words, I think if you say this bill would just abolish the Federal Metal and Nonmetallic Mine Safety Board, there is not going to be anybody that particularly wants to oppose it at all. On the other hand, I think if you were to say that, "We are going to create an omnibus Review Board," there might be an awfully lot of comments from within the industry.

Senator PERCY. Mr. Hale, is it your intent, if this Board is abolished, to continue in public service?

Mr. HALE. I will certainly have to look for work.

Senator PERCY. I think you might end up with some letters of commendation from some of us who find your attitude so refreshing. I think you have faithfully through the years reported to Congress and to the President, via OMB, for each of the 4 years the simple and vacant record of the board.

There is an element of sardonic humor in these reports which seems to have been ignored.

I think, Mr. Chairman, to have the record complete, I will offer the reports such as they are for the record so that we can see how vacant they are.

I would also raise the question with OMB, an Agency that we helped reform and constitute in this committee. I recall how strongly we emphasized to them at the time that we wanted the management end of OMB to be emphasized. I cannot understand, really, how, year after year, they can submit the budget and put in money for this nonactive board without urgently requesting that Congress rectify this matter.

But I want to commend you for doing what finally, after reporting to the executive and congressional branches and seeing no action, what you had to do. You had to go public in a sense. You did it, I think, in a fine way.

Mr. Chairman, I would like to just indicate that there are ways in which we can work with the fourth estate, the news media. I found this in Chicago when I formed an Operation Watchdog at the Better Government Association, raised the money for it, many years ago. We had an arrangement with the media. They would put investigative reporters to work. We would team up with them and we would find ways that, together, we could expose to the light of day and put sunshine on the fact that there are operations in the Government that simply have to be changed. Inertia prevents them from being changed. In this case I would say CBS and Walter Cronkite and Senator Ribicoff and Percy and other members of this committee have formed a good team to save a quarter of a million dollars. Without your assistance and help it never would have probably come to our attention. I think you are to be highly commended for your attitude. I will support you to move into any operation where there is real effort and real work for you. I want to be sure that you listen to Beethoven at night and not on the Government payroll. I am not against Beethoven, but I am against listening to Beethoven on the Government payroll on Government time.

Mr. HALE. Senator Percy, I appreciate your remarks very much. It has been pretty rough going.

Chairman RIBICOFF. Thank you very much, sir.

[Prepared statement of Mr. Hale follows:]

Statement of Jubal Hale, Executive Secretary, Federal Metal and Nonmetallic Mine Safety Board of Review, before the Senate Government Operations Committee.

Mr. Chairman and Members of the Committee,

For a period in excess of two years, there has been legislation pending before Congress which would, if passed, extensively revise mine safety law and, in the process, abolish the Federal Metal and Nonmetallic Mine Safety Board of Review. Also, for a period of two and one-half years, the Department of the Interior has been working on legislation that would extensively revise mine safety law and abolish this Board.

Over two years ago, this Board made rather extensive inquiry into what changes might be in the offing in mine safety legislation and discussed whether or not the Board should attempt to play any part in shaping this legislation. The Members of the Board were in unanimous agreement that they should take a proprietary view only of their duties on the Board and not attempt to use their position on the Board to influence mine safety legislation. At the last meeting of the Board, October 8, 1974, in Las Vegas, Nevada, the Chairman raised the question whether or not the Board should file a report with Congress, briefly reciting the history of the Board and recommending to Congress that it consider the Board's abolishment for the reason that no cases have been filed with the Board. The Members of the Board were unanimous in opposing the motion of the Chairman. Accordingly, it is the position of the Board that it neither supports nor opposes the passage of S. 1774.

While the Board neither supports nor opposes particular legislation, I must report that the problems of the Board have become such that Congress must take some action of some kind. Members of the Board are appointed by the President, with the advice and consent of the Senate. These nominations are referred to the Senate Labor and Public Welfare Committee. That committee, through its Chief Counsel, has informed us that we cannot expect the Committee to approve any further appointment to the Board.

The Board is a structured Board, consisting of one academic Chairman, two representatives from management, and two from labor. The Board presently has only four Members, being short one management representative, whose appointment remains pending before the Senate. On September 15, 1975, the term of the Chairman expires and, at that time, the Board will consist of two representatives from labor and one from management. It is extremely doubtful whether such a Board is operational at all and I have doubts whether or not the Members would even be willing to serve on such a Board.

Although the Board has had no cases and has been described as "worthless and toothless," a casual reading of the Federal Metal and Nonmetallic Mine Safety Act will reveal that the Board is the principal administrative remedy for an operator whose mine has been closed. The Department of the Interior has approximately 375 mine inspectors in the field. Safety regulations are enforced when necessary by the issuance of mine closure orders. For these closure orders to be viable, they must be such that they can be taken into court and enforced. As of September 15, 1975, if this Board is no longer operational and no new legislation has been passed, the question will have to be faced of whether or not these closure orders can be enforced when the operator does not have the remedy guaranteed to him by the Federal Metal and Nonmetallic Mine Safety Act.

Chairman RIBICOFF. Mr. Richards.

TESTIMONY OF JAMES R. RICHARDS, DIRECTOR, OFFICE OF HEARINGS AND APPEALS, DEPARTMENT OF INTERIOR

Mr. RICHARDS. Good morning, Senator.

Chairman RIBICOFF. You may proceed. Your statement can go in the record as if read. If you want to give us your conclusion, I have no questions. We understand it pretty well.

Mr. RICHARDS. Just as a taxpayer, I think you are right. I think probably this Board which has now come to the attention, not only of this committee, but to the attention of the public through the publicity, probably does not serve any useful function. Of course, we recommend it should be abolished.

Chairman RIBICOFF. Thank you.

Do you have any questions?

Senator PERCY. Mr. Chairman, I would like to submit four questions to Mr. James Richards. But in view of the conflicts of both of us, I would appreciate that being done for the record.

Chairman RIBICOFF. Without objection the questions will be submitted to you, Mr. Richards, and you will answer them for the record.

Mr. RICHARDS. Very well, Mr. Chairman. I would be happy to.
[The information follows:]

STATEMENT OF JAMES R. RICHARDS, DIRECTOR, OFFICE OF HEARINGS AND APPEALS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear and testify on S. 1774, which would abolish the Federal Metal and Nonmetallic Mine Safety Board of Review.

We believe that this Board should be abolished. If this is accomplished, the review functions of the Secretary, as contained in the present Section 9 of the "Federal Metal and Nonmetallic Mine Safety Act," would continue to be handled by the Board of Mine Operations Appeals in the Office of Hearings and Appeals. Since the creation of our Office some five and one-half years ago, only one appeal under the Act has been referred to BMOA. This case, *Grand Rapids Gypsum Co.*, IBMA 75-M-1, was disposed of summarily when the applicant for review submitted nothing further than its' application. We simply affirmed the report of MESA's special inspection team.

There is no provision in Section 9 for Court review of a final Secretarial decision. But the operator can appeal the Secretary's decision to the Metal and Nonmetallic Board and receive what amounts to a trial *de novo* under Section 11(a) of the Act. The operator may then seek review of that Board's decision in a U.S. Circuit Court of Appeals under a substantial evidence test pursuant to Section 12 of the Act. Obviously, if Section 12 is totally repealed, and the Board is abolished an operator will have no appeal to the Courts from a final Secretarial decision.

Section 2 of the Bill purports to transfer to the Secretary "all functions and powers of the Federal Metal and Nonmetallic Mine Safety Board of Review." We strongly believe that the hearings functions of the the Board, including subpoena powers, should be specifically transferred to the Secretary. Administrative due process could not be insured without such powers. Although Section 18 of the Act expressly excludes the application of the Administrative Procedure Act to these proceedings, the Office of Hearings and Appeals can provide qualified hearing officers plus a review that is final for the Secretary by the Board of Mine Operations Appeals. The building of an evidentiary record before the Department is important if there should be further appeals to the U.S. Courts. In this respect we think it unwise to completely repeal Section 12 of the Act which contains the right of a mine operator to appeal a final decision under the Act to the U.S. Circuit Court of Appeals. Such further appeal is entirely appropriate in these cases and if it is not provided for in the Act, the Courts often fashion varying and more restrictive remedies.

We are in the process of preparing amendatory language to clear up the two areas of concern I have just mentioned. At least two other Agencies, the Departments of Labor and Justice must be consulted before final amendatory language can be approved by the Administration and submitted. We will be pleased to work with the Committee and its staff in expediting the drafting of an acceptable bill. If the Committee has any questions, I will be pleased to respond.

Questions submitted to Mr. Richards from Senator
Percy with responses

Has the Interior Department prior to today ever recommended to the Congress or to OMB that this Board be eliminated?

The Office of Hearings and Appeals has not prior to today ever recommended that this Board be eliminated. To the best of my knowledge the Department of Interior has never so recommended. It should be pointed out that this Board was established by the Congress as an independent Agency whose members are appointed by the President and confirmed by the Senate. Its makeup and authority is provided for by Sections 10 and 11 of the Federal Metal and Nonmetallic Mine Safety Act of 1966. The review authority of the Secretary of the Interior arises under Section 9 of said Act. The provisions of the Act permit an operator to appeal directly to the Board without first seeking review by the Secretary. The Board can overrule a final decision of the Secretary. Consequently, the Secretary and the Board have separate and distinct review powers and work independently of each other. The budget of the Board has heretofore been prepared by Interior merely as an administrative convenience to the Board.

1. Could you describe for us the role of the Office of Hearings and Appeals under the present Metal and Nonmetallic Mine Safety Act?

The role of the Office of Hearings and Appeals arises by delegation from the Secretary to the Board of Mine Operations Appeals of his review function authorized by Section 9 of the Act. Specifically, it is spelled out in 43 CFR 4.1(4): "* * * and the review authority of the Secretary under the Federal Metal and Nonmetallic Mine Safety Act (Public Law 89-577): 80 Stat. 772 et seq., 30 U.S.C. secs. 721-740) * * *" The procedures implementing this authority are found in 43 CFR 4.650-4.666 (copy attached). Specifically, the Office of Hearings and Appeals (Board of Mine Operations Appeals) is initially advised of an operators' application for review by the District Manager at the time of his appointment of the three reviewing inspectors pursuant to 43 CFR 4.663. The reviewing inspectors report must be completed and filed with the office which initially issued the order of withdrawal within five (5) days and the issuing office immediately forwards to the Board of Mine Operations Appeals the original and two (2) copies of:

- (1) The reviewing inspectors' report;
- (2) The application for review; and
- (3) The order and the initial inspection report.

A copy of the reviewing inspectors' report is required to be served on the party seeking review and within five (5) days after service, applicant may file a brief or written argument or notice of intention to so file and request an extension of time not to exceed ten (10) days. After consideration of applicant's brief or argument and the inspectors' reports the Board will issue an order, consistent with its findings, affirming, revising or annulling the order under review. The applicant and the issuing office are promptly advised of the Board's decision.

2. (follow-up to question 1.)

If a closure order were appealed to the Secretary, your office then would send three inspectors to reinspect the mine and either review or annul the closure order or deny the appeal.

Have you any experience or idea about how long a typical review by your office might take?

The Board does not dispatch the three inspectors. This is done by the Mining Enforcement Safety Administration.

The Board has had only one appeal referred to it under the Act. Grand Rapids Gypsum Co., IBMA 75-M-1. In this case a period of 39 days elapsed from the date the Board received notification of the appointment of the three (3) reviewing inspectors until the order of

the Board was issued. It should be noted that the applicant, Grand Rapids, requested and received an extension of time until April 21, 1975, in which to file a brief or argument. However, no brief or argument was filed and the Board decided the case on the basis of the record before it pursuant to 43 CFR 4.666. The order of the Board was issued April 29, 1975. Theoretically it is possible for an application for review to the Board to be disposed of within a period of two weeks to a month from the date the application for review is filed with the issuing office, depending upon whether the applicant requests additional time for filing a brief or argument.

I would expect that Grand Rapids would be fairly representative of the time consumed in Secretarial review proceeding. However, it must be pointed out that under the present law and regulations, the Secretary has no authority to hold an evidentiary hearing to resolve disputed facts.

3. (follow-up to question 2.)

In light of the relative quickness of this procedure, as you have described it, it would seem that we should expect to see appeals of at least some closure orders if they involve major and costly repairs of safety hazards to be corrected by mine operators. Would you agree with me on this point?

I would agree. However, I would point out that the Metal and Non-metallic Mine Safety Act of 1966 appears to have been patterned after the 1941 Coal Mine Safety Act (in effect prior to the 1969 Act) and suffers the same infirmities. The Federal Coal Mine Safety Board of Review created by the 1952 amendment (Public Law 552) also had very few appeals during its existence over a period of 17 years. My personal opinion is that since notices of violation under the Act carry no sanctions (and are advisory at best) operators will wait until threat of or an actual closure before instituting even the smallest of repairs.

4. Congressman Hechler, in his prepared testimony, points to the sharp increase in mine closure orders issued over the past few years, almost doubling between 1973 and 1974 from 946 to 1871 closure orders. In your opinion, what factors might account for this marked increase?

The answer to this question is peculiarly within the province of the enforcement area of the Secretary--Mining Enforcement and Safety Administration. However, I have been informed by MESA that for the period you mention, the number of inspectors for metal and non-metal mines and, consequently, the number of inspections substantially increased.

TITLE 43—PUBLIC LANDS: INTERIOR

PROCEDURES UNDER METAL AND NONMETALLIC MINE SAFETY ACT OF 1966

*General***§ 4.650 Construction of rules.**

These rules shall be construed to secure the just, prompt, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

§ 4.651 Definitions.

As used in these rules pertaining to Procedures under Federal Metal and Nonmetallic Mine Safety Act of 1966:

(a) The term "Act" means the Federal Metal and Nonmetallic Mine Safety Act, Public Law 89-577.

(b) The terms "Secretary," "operator," and "mine" have the meanings set forth in section 2 of the Act.

(c) The term "imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm before such condition can be abated.

(d) The term "mandatory safety standard" means the mandatory health and safety standards promulgated by the Secretary pursuant to section 6 of the Act.

(e) The term "issuing office" means that district or subdistrict office of the Mining Enforcement and Safety Administration which has issued the order and the initial inspection report.

(f) The term "order" means an order issued under subsection (a) or (b) of section 8 which requires an operator of a mine or his agent to immediately cause all persons except those referred to in subsections 8(a) (1), (2), and (3) to be withdrawn and to be prohibited from entering the area of the mine through which an imminent danger or an unabated violation of a mandatory health or safety standard exists.

(g) The term "initial inspection report" means the report of a single inspector issued pursuant to section 8 of the Act.

(h) The term "reviewing inspectors' report" means the report of a team of three (3) inspectors designated by the Secretary pursuant to section 9 of the Act.

(i) The term "Board" means the Board of Mine operations Appeals within the Office of Hearings and Appeals, Department of the Interior.

[36 F.R. 7186, Apr. 15, 1971 ; 36 F.R. 7588, Apr. 22, 1971]

§ 4.652 Public information.

As a matter of public information, a copy of the order the initial inspection report, the application to review, and the reviewing inspectors' report shall be kept available at the issuing office of the Mining Enforcement and Safety Administration for inspection by interested persons.

§ 4.653 Disqualification.

An inspector shall withdraw from a case if he deems himself disqualified because of conflict of interest. If prior to the review inspection there is filed in good faith an affidavit of personal bias or disqualification of an inspector with substantiating facts and the inspector does not withdraw, the Board shall determine the matter of disqualification.

*Application for Review of Orders***§ 4.660 Who may file.**

The mine operator of the affected mine shall have a right to review and appeal an order issued pursuant to the Act.

[36 F.R. 7186, Apr. 15, 1971 ; 36 F.R. 7568, Apr. 22, 1971]

§ 4.661 Filing.

The application for review with five (5) copies shall be filed at the issuing office of the Mining Enforcement and Safety Administration.

§ 4.662 Form of application.

The application for review shall be in writing and shall contain a short and plain statement of the facts and grounds upon which it is based. The application may recite: That the imminent danger as set out in such order did not occur or does not exist at the time of the filing of such application; that violation of mandatory safety standard, as set out in such order, has not occurred; that such violation has been totally or partially abated; that the period of time within which the order was based was not reasonable or that the area of the mine described in such order is not so affected at the time of the filing of such application or such other grounds as the applicant deems to present.

§ 4.663 Reviewing inspectors' report.

(a) Upon receipt by the issuing office of the Mining Enforcement and Safety Administration of an application to review an order, three (3) duly qualified inspectors, none of whom shall have made the order or initial inspection report, shall be appointed to make a special inspection of the affected mine and report to the Board thereon. Notification of appointment of reviewing inspectors is to be made to the Board and the operator of the affected mine.

(b) The reviewing inspectors may, in their discretion, hear and receive reports from the mine operator and the miners or their representatives, and include a summary and evaluation of these in the overall inspection report.

(c) As soon as practicable but no later than five (5) working days after the receipt of the application to review an order, the reviewing inspectors' report shall be completed and forwarded to the issuing office. Upon receipt of the reviewing inspectors' report the issuing office shall immediately forward to the Board the original and two (2) copies of: (1) The reviewing inspectors' report; (2) the application for review; (3) the order and the initial inspection report. A copy of the reviewing inspectors' report shall be served on the party seeking review.

§ 4.664 Contents of the reviewing inspectors' report.

(a) The reviewing inspectors' report shall review the findings of the initial inspection report and the objections raised in the application for review and present in detail the findings of the inspectors as to: (1) The existence of an imminent danger or of a violation of a mandatory safety standard at the time of the order; (2) the extent the imminent danger or violation of a safety standard continues unabated; (3) the exact area of the mine affected; (4) in the case of a violation of a mandatory safety standard the reasonableness of time given to abate the violation and a recommendation as to whether and for what period an extension of time should be granted and the reasons therefor.

§ 4.665 Brief or written argument.

(a) Within five (5) days after service of the reviewing inspectors' report, applicant may file a brief or written argument or a notice of intention to file brief or written argument and request for extension of time to file—not to exceed ten (10) days. When a party who filed a notice of intention to file a brief or written argument fails to file a timely brief or argument the Board may proceed to dispose of the appeal pursuant to § 4.666.

(b) Applicant's brief or written argument shall set forth in detail the objections presented in his application, the reasons therefor and the relief requested. The brief may contain tests, reports, evaluations and other matter which applicant deems pertinent.

(c) Three (3) copies of each brief shall be filed with the Board. Copies of briefs shall be legibly typewritten, printed or duplicated.

§ 4.666 Failure to present written argument.

If a brief or other written argument is not received within the prescribed period, or the expiration of any authorized extension, the Board shall decide the appeal on the basis of the record before it.

Chairman RIBICOFF. Thank you very much for being here. The hearing will stand adjourned.

[Whereupon, the hearing was adjourned at 10:50 a.m.]

[Material submitted for the record follows:]

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW,
Washington, D.C., February 28, 1972.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is calendar year 1971 report of the activities of the Federal Metal and Nonmetallic Mine Safety Board of Review, as required by Section 10(1) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 730(1)).

Respectfully yours,

JUBAL HALE,
Executive Secretary.

Enclosure.

1971 CALENDAR YEAR REPORT

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

The Federal Metal and Nonmetallic Mine Safety Board of Review is a newly formed Board, created by provision of the Federal Metal and Nonmetallic Mine Safety Act. The five Members of the Board are: Dr. Howard L. Hartman, Chairman; Messrs. Peter J. Bensoni, William W. Little, Robert W. McVay, and Charles E. Schwab.

The Board is a hearing agency, established to review contested orders issued by the Bureau of Mines which require a mine operator to withdraw personnel from a mine the Bureau believes to be in violation of mine safety standards. As such, the Board performs essentially a judicial function; the Board is not engaged in mine inspection, or in the promulgation of safety standards. A withdrawal order of the Bureau of Mines is reviewed by the Board whenever an operator of a mine affected by an order files an application for review with the Board.

The Members of the Board met for the first time on July 30, 1971, and formulated proposed Rules of Procedure and published them in the Federal Register on September 1, 1971, inviting written comments thereon. On October 20, 1971, the Board met and considered comment that had been received on the proposed Rules, and promulgated the Rules in final form, publishing them in the October 28, 1971 Federal Register.

The Board has completed its organizational work and has offices in the District of Columbia, presently employing a staff of two—the Executive Secretary, who also serves as Legal Counsel, and a secretary. The Board heard no cases, nor were any filed in 1971.

JUBAL HALE,
Executive Secretary.

JANUARY 3, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is calendar year 1972 report of the activities of the Federal Metal and Nonmetallic Mine Safety Board of Review, as required by Section 10(1) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729(1)).

Respectfully yours,

JUBAL HALE,
Executive Secretary.

Enclosure.

1972 CALENDAR YEAR REPORT

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

The Federal Metal and Nonmetallic Mine Safety Board of Review is a hearing agency, created by provision of the Federal Metal and Nonmetallic Mine Safety Act to review orders issued by the Bureau of Mines requiring mine operators to withdraw personnel from mines the Bureau believes to be in violation of mine safety standards (i.e., mine closure orders). Orders may be reviewed upon application of a mine operator whose mine has been closed.

Though the Board was in operation the entire calendar year 1972, and maintained offices at 1875 Connecticut Avenue, N.W., Washington, D.C., *no applications* to have closure orders reviewed were filed with the Board.

The Board held but one meeting for administrative purposes on February 24-25, 1972.

JUBAL HALE,
Executive Secretary.

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW,
Washington, D.C., January 21, 1974.

HON. GERALD S. FORD,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is calendar year 1973 report of the activities of the Federal Metal and Nonmetallic Mine Safety Board of Review, as required by Section 10(1) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729(1)).

Respectfully yours,

JUBAL HALE,
Executive Secretary.

Enclosure.

1973 CALENDAR YEAR REPORT

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

The Federal Metal and Nonmetallic Mine Safety Board of Review is an independent agency established to review mine closure orders issued by authorized representatives of the Secretary of the Interior (i.e., the mine safety inspectors) which require a mine operator to close all or part of a mine because conditions exist in violation of the Federal Metal and Nonmetallic Mine Safety Act or regulation(s) issued pursuant to this Act. Appeal to the Federal Metal and Nonmetallic Mine Safety Board of Review is the principal administrative remedy of a mine operator affected by a closure order and it is before the Board that a record is made from which further appeal may be pursued to the court.

Though 965 mine closure orders were issued in 1973 under the Federal Metal and Nonmetallic Mine Safety Act, none of these orders was appealed by a mine operator to this Board. Therefore, assuming these orders have been enforced, either the mines remain closed, or they have reopened because the violations have been abated, or the order has been annulled or revised by the Secretary of the Interior.

The Board maintained its principal (and only) office in the District of Columbia, as required by Section 10(d) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729(d)). The Board met twice in 1973 for administrative purposes.

JUBAL HALE,
Executive Secretary.

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW,
Washington, D.C., January 15, 1975.

HON. NELSON A. ROCKEFELLER,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is calendar year 1974 report of the activities of the Federal Metal and Nonmetallic Mine Safety Board of Review, as required by Section 10(1) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729(1)).

Respectfully yours,

JUBAL HALE,
Executive Secretary.

Enclosure.

1974 CALENDAR YEAR REPORT

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

The Federal Metal and Nonmetallic Mine Safety Board of Review is an independent agency established to review mine closure orders issued by authorized

representatives of the Secretary of the Interior (i.e., mine safety inspectors) which require a mine operator to close all or part of a mine because conditions exist in violation of the Federal Metal and Nonmetallic Mine Safety Act or regulation(s) issued pursuant to this Act. Appeal to the Federal Metal and Nonmetallic Mine Safety Board of Review is the principal administrative remedy of a mine operator affected by a closure order and it is before the Board that a record is made from which further appeal may be pursued to the court.

Though 1998 mine closure orders were issued in 1974 under the Federal Metal and Nonmetallic Mine Safety Act, none of these orders was appealed by a mine operator to this Board. Therefore, assuming these orders have been enforced, either the mines remain closed, or they have reopened because the violations have been abated, or the order has been annulled or revised by the Secretary of the Interior.

The Board maintained its principal (and only) office in the District of Columbia, as required by Section 10(d) of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 729(d)). The Board met once in 1974 for administrative purposes.

JUBAL HALE,
Executive Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 10, 1975.

HON. ABRAHAM RIBICOFF,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has before it for consideration S. 1774, a bill "To reorganize the executive branch of the Government by abolishing the Federal Metal and Nonmetallic Mine Safety Board of Review and transferring the functions and powers of such Board to the Secretary of the Interior."

We support abolishing the Federal Metal and Nonmetallic Mine Safety Board of Review as provided in S. 1774, subject to the concerns set forth below.

S. 1774 would repeal sections 2(e) and 10 through 12 of the Federal Metal and Nonmetallic Mine Safety Act and would transfer all functions and powers of the Federal Metal and Nonmetallic Mine Safety Board of Review to the Secretary of the Interior.

The Federal Metal and Nonmetallic Mine Safety Board of Review has heard no cases since it was first established under the Act in 1966. It requires, however, continuous funding and this is wasteful. In abolishing the Board, however, appropriate procedures should be included for review of notices and orders issued under the Act.

We would prefer to retain in the Act specific provisions for judicial review such as those contained in section 12. In addition, procedures for administrative review and a transfer of subpoena power to the Secretary should be explicitly set forth. We will be prepared shortly to supply specific language to meet these concerns. Subject to these considerations, we favor abolition of the Board.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JACK W. CARLSON,
Assistant Secretary of the Interior.

[From the Congressional Record, May 20, 1975]

By Mr. Percy: S. 1774. A bill to reorganize the executive branch of the Government by abolishing the Federal Metal and Nonmetallic Mine Safety Board of

Review and transferring the functions and powers of such Board to the Secretary of the Interior. Referred to the Committee on Government Operations.

Mr. PERCY, Mr. President, on page 887 of the "Appendix to the Budget for Fiscal Year 1976" there is a request "for necessary expenses of the Federal Metal and Nonmetallic Mine Safety Board of Review—\$60,000." I believe that this budget request is unjustified and that the Review Board is unnecessary. I am therefore submitting a bill today that will abolish this Review Board and transfer its functions and powers to the Secretary of the Interior.

This Board was created in 1966, pursuant to Public Law 89-577. Its purpose was to provide an administrative hearing for appeals from noncoal mine operators ordered by the Mining Enforcement and Safety Administration to close their mines for safety reasons. An additional process of appeal exists with the Office of Hearings and Appeals in the Department of the Interior. The only real difference between the two appeals procedures is that the law specifically provides for court review only upon an appeal to the Review Board. Basically, however, the two processes needlessly overlap.

A look at the record of the Federal Metal and Nonmetallic Mine Safety Board of Review will show that it has never heard a single appeal of a mine closure. Its five members, two of whom are representatives of organized mine labor, two of the mining industry, and one of academia, convene once each year in conjunction with a professional society meeting for mining engineers. With no business to conduct, there has yet to be a purpose for a meeting of the Board.

I find it curious that, since 1972, of 3,392 mine closures ordered, only one has ever been appealed, and that particular case was appealed to the Secretary of the Interior and not to the Review Board. Perhaps the absence of appeals is an indication that the procedure for issuing orders for mine closures is too lax. I do not know. The health and safety of mine workers is a serious matter, and I think the Congress ought to look further into this question. I have therefore asked the Comptroller General to take a look at the mine closure appeals process.

In any case, I believe that the review afforded by the Interior Department's Office of Hearings and Appeals should be adequate, provided that we allow the findings of that office to be subject to court review. The bill that I introduce today will simply abolish the Federal Metal and Nonmetallic Mine Safety Board of Review and transfer its functions to the Secretary of the Interior. If the Congress passes this bill, \$60,000 of Federal funds will be saved.

Mr. President I ask unanimous consent that an article from the Washington Star-News of May 15, 1975, entitled "Bureaucrat Concedes That He's Superfluous," be printed in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

BUREAUCRAT CONCEDES THAT HE'S SUPERFLUOUS

Jubal Hale admits he's a bureaucrat with little to do. So he spends his working hours reading and listening to Beethoven records at his office.

Hale says it's not that he doesn't try to earn his \$19,693-a-year salary as executive secretary of the Federal metal and Nonmetallic Safety Board of Review. It's just that the board has never had anything to review in its four years, Hale said in an interview.

"We have been expecting to be abolished for over two years," Hale said. "Bills have been introduced in Congress to abolish us. But nothing happened."

And nothing is what occupies most of his days on the job, once the routine paperwork of maintaining the office is taken care of, Hale concedes.

Apparently, neither Congress nor the Ford administration has taken the hint. In fact, the administration is asking for \$60,000 in annual upkeep for the office in the President's budget for fiscal year 1976.

Hale was contacted after Rep. Ken. Hechler, D-W. Va., charged in a House Appropriations subcommittee meeting yesterday that the board was "a totally useless, toothless and do-less government agency which has never earned its pay."

Hechler called for the board to be abolished. And Hale said that he doubted any objections would come from his office if Congress did just that.

"We have been extremely candid with Congress," Hale said. "Our annual reports are clear and concise. We have had no cases."

The five-member board was set up to hear appeals from non-coal mine operators ordered to shut down by the Mining Enforcement and Safety Administration as unsafe. A MESA spokesman expressed surprise that the board was still in operation. "I thought it had been abolished some time ago," he said.

There were 1,998 closure orders last year but not one was appealed to Hale's board. Hechler said that mine operators have another avenue of appeal through the Interior Department.

He described a trip to the board's offices last week.

"The door was open, the telephone was off the hook, and nobody was around," said the congressman. "The coffee-making equipment was elaborate. A large stereo set was in the office of the executive secretary with Beethoven records stacked high."

[S. 1774, 94th Cong., 1st sess.]

A BILL To reorganize the executive branch of the Government by abolishing the Federal Metal and Nonmetallic Mine Safety Board of Review and transferring the functions and powers of such Board to the Secretary of the Interior

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 2(e) and 10 through 12 of the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721(e) and 729-31) are repealed.

SEC. 2. All functions and powers of the Federal Metal and Nonmetallic Mine Safety Board of Review are hereby transferred to the Secretary of the Interior.

ADDITIONAL COSPONSORS

Additional cosponsors to S. 1774, from the Congressional Record, June 10, 1975—Mr. Nunn, Mr. Brock, Mr. Proxmire, Mr. Roth, Mr. Hatfield, Mr. Domenici, and Mr. William L. Scott.



