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FEDERAL MINE SAFETY AND HEALTH AMENDMENTS ACT OF 1977

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 717

TO PROMOTE SAFETY AND HEALTH IN THE MINING INDUSTRY, TO PREVENT RECURRING DISASTERS IN THE MINING INDUSTRY, AND FOR OTHER PURPOSES

MARCH 30, 31, AND APRIL 1, 1977

Printed for the use of the Committee on Human Resources

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FEDERAL MINE SAFETY AND HEALTH AMENDMENTS ACT OF 1977

WEDNESDAY, MARCH 30, 1977

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams and Schweiker.

The CHAIRMAN. We will come to order.

Today the Labor Subcommittee begins hearings on S. 717, the Federal Mine Safety and Health Amendments Act of 1977, cosponsored by myself and 25 other Senators including Senators Randolph, Pell, Nelson, Riegle, Javits, Schweiker, and Stafford, the members of this Labor Subcommittee.

Last year, as we know so vividly, 222 miners were killed, and 18,442 suffered disabling injuries as a result of work-related accidents. Disasters such as the Tower City flood continue to plague the mining industry, bringing with them untold suffering to innocent miners and their families.

No civilized nation should allow such human suffering as part of its quest for energy and minerals. S. 717 is our response to the obvious needs.

In my opinion, this legislation would address the deficiencies in our current mine safety and health program which have caused these unconscionable human disasters. S. 717 repeals the inadequate Metal and Nonmetallic Mine Safety Act of 1966.

While different standards would apply to different mining operations, our bill would make a strong and revitalized Coal Mine Health and Safety Act the vehicle by which adequate standards will be enforced for the entire mining industry. This legislation also places increased emphasis on solving the growing problem of health hazards in our Nation's mines.

An integral and critical part of this new Mine Safety and Health Act would be the assignment of the responsibility for enforcement and administration from the Department of the Interior to the Department of Labor.

Strengthening the basic laws protecting our Nation's miners and assigning the responsibility for enforcing these activities to the one department of the Government which has as its sole responsibility the

protection of labor is a critically important part of a national, comprehensive mine safety program.

In the months ahead, we will all be working on legislation to maximize the development and exploitation of our Nation's vast mineral and energy reserves. And a policy to develop and use our vast coal resources is an integral part of comprehensive national energy planning. We all know this.

The basic foundation of such a policy must be a strong, well-enforced national Mine Safety and Health Act. The well-being of our workers who will be extracting those resources must be assured. The exploitation of our reserves cannot be at the expense of the well-being of our miners.

This committee has been responsible over the years for the administration and enforcement of our mine safety and health laws. It understands the inadequacies of those laws and their enforcement. This bill addresses those inadequacies.

Any delays in the enactment of this legislation will be at the expense of our Nation's miners. They cannot be asked to bear the cost of inadequate mine safety. We must move quickly to lay the foundation for a comprehensive health and safety program before our new national energy and minerals program is set in place.

[The text of S. 717 follows:]

95TH CONGRESS
1ST SESSION

S. 717

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11 (legislative day, FEBRUARY 1), 1977

Mr. WILLIAMS (for himself, Mr. ABOUREZK, Mr. ANDERSON, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. EAGLETON, Mr. FORD, Mr. HEINZ, Mr. HUDDLESTON, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. MCGOVERN, Mr. MAGNUSON, Mr. METCALF, Mr. NELSON, Mr. PELL, Mr. RANDOLPH, Mr. RIEGLE, Mr. SCHWEIKER, Mr. STAFFORD, and Mr. STEVENSON) introduced the following bill; which was read twice and referred to the Committee on Human Resources

A BILL

To promote safety and health in the mining industry, to prevent recurring disasters in the mining industry, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Mine Safety and Health Amendments Act of 1977".

TITLE I—AMENDMENTS TO THE GENERAL PROVISIONS OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

SHORT TITLE

SEC. 101. The first section of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows: "That this Act may be cited as the 'Federal Mine Safety and Health Act of 1977'".

DEFINITIONS AND APPLICABILITY

SEC. 102. (a) (1) Section 2 of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "coal" wherever it appears. (2) Section 2 (g) (1) of such Act is amended by striking out "the Interior" and inserting in lieu thereof "Labor".

(b) (1) Section 3 (a) of such Act is amended by striking out "the Interior" and inserting in lieu thereof "Labor".

(2) Section 3 (d) of such Act is amended by deleting the semicolon at the end thereof, and inserting in lieu thereof "or any independent contractor performing services or construction at such mine;"

(3) Section 3 (h) of such Act is amended to read as follows:

"(h) 'Mine' means (1) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (2) private

ways and roads appurtenant to such area, and (3) lands, excavations, underground passageways, shafts, slopes, tunnels, and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in the milling of such minerals, or the work of preparing coal, and includes custom coal preparation facilities, except that with respect to protection against radiation hazards such term shall not include property used in the milling of source minerals defined in the Atomic Energy Act of 1954, as amended. In making a determination of what constitutes mineral milling for purposes of this Act the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment."

(4) Sections 3 (d), (e), (g), and (j) of such Act are each amended by striking out the word "coal" wherever it appears.

(5) Section 3 of such Act is amended by striking out the word "and" at the end of paragraph (l), by striking out the period at the end of paragraph (m) and inserting in lieu

thereof a semicolon, and by adding at the end thereof the following new paragraphs:

"(n) 'Administration' means the Mine Safety and Health Administration in the Department of Labor; and

"(o) 'Commission' means the Federal Mine Safety and Health Review Commission."

(c) Section 4 of such Act is amended by striking out the word "coal".

(d) (1) Section 5 (c) of such Act is amended by striking out Labor" and inserting in lieu thereof "the Interior".

(2) Section 5 (f) of such Act is amended by striking out the word "coal" wherever it appears, and by striking out "section 106" and substituting "section 107".

TITLE II—MINE SAFETY AND HEALTH STANDARD AMENDMENTS

AMENDMENT TO TITLE 1

SEC. 201. Title I of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"DUTIES

"SEC. 101. (a) Each mine operator (1) shall furnish to each miner employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or harm to such miner; and (2) shall comply with the safety and health standards and all rules, regulations, and orders promulgated under this Act; and

"(b) Each miner subject to the provisions of this Act shall comply with the safety and health standards and all rules, regulations, and orders promulgated under this Act which are applicable to his own actions and conduct.

"SAFETY AND HEALTH STANDARDS

SEC. 102. (a) The Secretary may by rule promulgate, modify, or revoke any safety and health standards for the health and safety of miners, including standards for mine rescue and firefighting operations, and for the prevention of accidents, injuries, or health hazards in mines which are subject to this Act in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and the following provisions:

"(1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health, Education, and Welfare, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed

under section 103 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health, Education, and Welfare, together with all pertinent factual information developed by the Secretary or the Secretary of Health, Education, and Welfare, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than one hundred and eighty days. When the Secretary receives a recommendation from the National Institute for Occupational Safety and Health that a rule be promulgated, modified, or revoked, the Secretary must, within sixty days after receipt thereof, refer such recommendation to an advisory committee pursuant to this paragraph, or publish such as a proposed rule pursuant to paragraph (2) of this subsection, or publish in the Federal Register his determination not to do so, and his reasons therefor.

"(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking a safety and health standard in the Federal Register. If the Secretary determines that a rule should be proposed and in connection therewith has

appointed an advisory committee as provided by paragraph (1) of this subsection, the Secretary shall publish a proposed rule or the reasons for his determination not to publish such rule, within sixty days following the submission of the advisory committee's recommendation, or the expiration of the period of time prescribed by the Secretary in such submission. In either event, the Secretary shall afford interested persons a period of thirty days after any such publication to submit written data or comments on the proposed rule.

"(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing. Any hearing under this subsection shall be held promptly. Hearings required by this subsection shall be informal and shall be conducted by the Secretary, who may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. A verbatim tran-

script shall be taken of any such informal hearing and shall be available to the public.

"(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking a safety or health hazard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected operators and miners will be informed of the existence of the standard and of its terms and that operators affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

"(5) (A) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer any material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments,

and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(B) The Secretary of Health, Education, and Welfare as soon as possible after the date of enactment of the Federal Mine Safety and Health Amendments Act of 1977 but in no event later than three years after such date and on a continuing basis thereafter, shall, for each toxic material or harmful physical agent which is used or found in a mine, determine whether such material or agent is potentially toxic at the concentrations in which it is used or found in a mine, and shall immediately submit such determination to the Secretary, together with all pertinent criteria. Within sixty days after receiving any determination together with criteria in accordance with the preceding sentence relating to a toxic material or harmful physical agent which is not covered by a health or safety standard promulgated under this section, the Secretary shall either appoint an advisory committee to make recommendations with respect to a health and safety standard covering such

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material or agent in accordance with paragraph (1) of this subsection or publish a proposed rule promulgating such a health and safety standard in accordance with paragraph (2) of this subsection or shall publish his determination not to do so.

"(6) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use of exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner so as to assure the maximum protection of miners. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the operator or at his cost, to miners exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Where appropriate, the standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional

capacity by reason of exposure to the hazard covered by the standard, that miner shall be removed from such exposure and reassigned. Any miner transferred as a result of such exposure shall continue to receive compensation for such work at not less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health, Education, and Welfare, such examinations may be furnished at the expense of the Secretary of Health, Education, and Welfare. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare, and, at the request of the miner, to his designated physician.

"(7) In promulgating or revoking standards as authorized in this title, or in publishing any rule as authorized in this title, the Secretary shall not reduce the protection afforded miners below that provided by any safety or health standard previously in effect.

"(b) (1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that miners are exposed to grave danger from exposure to substances or agents determined to be toxic or

physically harmful, and (B) that such emergency standard is necessary to protect miners from such danger.

"(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

"(3) Upon publication of such standard in the Federal Register, the Secretary shall commence a proceeding in accordance with section 102(a) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than nine months after publication of the emergency standard as provided in paragraph (2) of this subsection.

"(c) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health, Education, and Welfare certifies, that such variance is necessary to permit an operator to participate in research approved by him or the Secretary of Health, Education, and Welfare designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers. No such variance shall be granted until the Secretary shall find that the granting of such variance will not adversely affect the health or safety of the miners, and the Secretary notifies the miners affected directly and by publication in the Federal Register.

"(d) (1) Any operator may apply to the Secretary for a temporary order permitting limited noncompliance with a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the operator files an application which meets the requirements of paragraph (2) and establishes that (A) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, (B) he will guarantee that employees are afforded no less than the same measure of protection they would have been provided by such standard, and (C) he has an effective program for coming into compliance with the standard as quickly as practicable. Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the operator must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a public hearing: *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing, or for sixty days, whichever is less, and the length of time

for which any such interim order may be in effect shall be deducted from the period for which a temporary order, if granted, shall be effective. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or six months, whichever is shorter, except that such an order may be renewed not more than twice (i) so long as the requirements of this subsection are met, and (ii) if an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

"(2) An application for a temporary order under this subsection shall contain—

"(A) a specification of the standard and/or portion thereof from which the employer seeks a noncompliance order.

"(B) a representation by the operator, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

"(C) a statement of the steps he has taken and will take (with specific dates) to protect miners against the hazards covered by the standard,

"(D) a statement of when he expects to be able to

comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

"(E) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

"(e) Any affected operator may apply to the Secretary for an order for a variance from a standard promulgated under this section. Affected miners and their representative shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue an order if he determines on the record, after opportunity for an inspection where appropriate and a public hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an operator will provide employment and

places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The order so issued shall prescribe the conditions the operator must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such order may be modified or revoked upon application by an operator, miner, representative of miners or by the Secretary, in the manner prescribed for its issuance under this subsection.

"(f) The provisions of subsections (d) and (e) shall not apply with respect to any standard enacted by title II of this Act and in effect on the date immediately prior to the effective date of the Federal Mine Safety and Health Amendments Act of 1976 or to any standard promulgated pursuant to that title prior to such date.

"(g) Any person who may be adversely affected by a standard issued under this section may, at any time prior to the sixtieth day after such standard is promulgated, file a petition challenging the validity of such standard with the United States court of appeals for the District of Columbia circuit or the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing

of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The procedures of this section shall be the exclusive means of challenging the validity of a standard.

"ADVISORY COMMITTEES

"SEC. 103. (a) The Secretary may appoint advisory committees to assist him in his standard setting functions under section 102 (a) of this Act, and to advise him on other matters relating to safety and health in mines. Each such advisory committee may include as a member one or more designees of the Secretary of Health, Education, and Welfare, the National Bureau of Standards, Department of Commerce, and the National Science Foundation, and shall include among its members persons qualified by experience and affiliation to present the viewpoint of operators of such mines and an equal number of persons similarly qualified to present the viewpoint of workers in such mines, as well as one or more representatives of mine inspection or safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including

one or more representatives of professional organizations of technicians or professionals specializing in safety or health, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of operators and miners) shall have an economic interest in any proposed rule.

"(b) Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such committee reimbursement sufficient to cover the actual costs to the State resulting from such representatives' membership on such committee.

"INSPECTIONS, INVESTIGATIONS, AND RECORDKEEPING-

"SEC. 104. (a) In order to carry out the purposes of this Act, the Secretary or the Secretary of Health, Education, and Welfare, or an authorized representative of either, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized—

"(1) to enter without delay any mine subject to this Act; and

"(2) to inspect and investigate any mine and all pertinent conditions, structures, machines, apparatus, devices, equipment, records, and materials therein, and to consult privately with any such operator, owner, agent, or miner. In carrying out the requirements of this section in each mine, the Secretary shall make inspections of the entire mine at least four times a year. Advance notice of any inspection shall not be given, except that the Secretary of Health, Education, and Welfare may give advanced notice of inspections conducted in connection with or for the purpose of research or technical assistance.

"(b) In making his investigations of accidents or other occurrences relating to health or safety in a mine under this Act, the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, resides, or transacts business, upon the application by the Secretary, shall have jurisdiction to issue such person an order requiring such person to appear to produce evidence if, as,

and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(c) (1) Each operator shall make, keep and preserve, and make available to the Secretary or the Secretary of Health, Education, and Welfare, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health, Education, and Welfare, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses in the mines subject to this Act. In order to carry out the provisions of this paragraph such regulations may include provisions requiring operators to conduct periodic inspections.

"(2) The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, shall prescribe regulations requiring operators to maintain accurate records of and to make periodic reports on, work-related deaths, injuries, and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job in the mines subject to this Act.

"(3) The Secretary, in cooperation with the Secretary

of Health, Education, and Welfare, shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable health and safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each operator shall promptly notify any miner who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable health and safety standard promulgated under section 102, or mandated under title II, and shall inform any miner who is being thus exposed of the corrective action being taken.

"(4) All accidents, including unintentional roof falls (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such accidents, roof falls, and investigations shall be kept and the information shall be made available to the Secretary or his

authorized representative and the appropriate State agency. Such records shall be open for inspection by interested persons.

(d) Any information obtained by the Secretary, or by the Secretary of Health, Education, and Welfare under this Act shall be obtained in such a manner as to impose a minimum burden upon operators, especially those operating small business consistent with the underlying purposes of this Act. Unnecessary duplication of effort in obtaining information shall be reduced to the maximum extent feasible.

"(e) Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any mine under subsection (a) for the purpose of aiding such inspection. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in the mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay as a result of his participation in the physical inspection made under this subsection. To the extent that the inspector determines that more than one representative from each party would further aid the inspection, he can permit each party

to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay as a result of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act.

"(f) (1) Any miners or representatives of miners who believe that a violation of a health or safety standard exists that threatens harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the miners or representative of miners, and a copy shall be provided the operator or his agent at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to

determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the miners and representative of the miners in writing of such determination.

"(2) Prior to or during any inspection of a mine, any miners or representatives of miners employed in such mine may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this Act or of any imminent danger which they have reason to believe exists in such mine. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation or order with respect to such danger and shall furnish the miners or representative of miners requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

"(g) (1) The Secretary and Secretary of Health, Education, and Welfare are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.

"(2) The Secretary and the Secretary of Health, Education, and Welfare shall each prescribe such rules and regulations as they may deem necessary to carry out their respon-

sibilities under this Act, including rules and regulations dealing with the inspection of mines subject to this Act.

"(h) Whenever the Secretary finds that a mine liberates excessive quantities of methane or other explosive gases during its operations, or that a methane or other gas ignition or explosion has occurred in such mine which resulted in death or serious injury at any time during the previous five years, or that there exists in such mine some other especially hazardous condition, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine during every five working days at irregular intervals. For purposes of this subsection, liberation of excessive quantities of methane or other explosive gases shall mean liberation of more than one million cubic feet of methane or other explosive gases during a twenty-four hour period: *Provided, however,* That when the Secretary finds that a mine liberates more than five hundred thousand cubic feet of methane or other explosive gases during a twenty-four hour period, he shall provide a minimum of one spot inspection by his authorized representative of all or part of such mine every ten working days at irregular intervals: *Provided further,* That when the Secretary finds that a mine liberates more than two hundred thousand cubic feet of methane or other explosive gases during a twenty-four hour period, he shall

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provide a minimum of one spot inspection by his authorized representative of all or part of such mine every fifteen working days at irregular intervals.

"(i) In the event of any accident (whether or not resulting in an injury or death) occurring in a mine, the operator shall promptly notify the Secretary thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any accident occurring in a mine where rescue and recovery work is necessary, the Secretary or an authorized representative of the Secretary shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

"(j) In the event of any accident occurring in a mine, an authorized representative of the Secretary, when present, may issue such orders as he deems appropriate to insure the safety of any person in the mine, and the operator of such mine shall obtain the approval of such representative, in consultation with appropriate State representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or return affected areas of the mine to normal.

"CITATIONS AND ORDERS

"SEC. 105. (a) (1) If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a mine subject to this Act has violated this Act, or any rule, order, or regulation promulgated pursuant to this Act, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

"(2) If a citation under section 105 (a) (1) is issued for a violation which the Secretary or his authorized representative believes to have been willfully committed, or committed with gross negligence, and to have subjected a miner or miners to an imminent danger, the Secretary or his authorized representative shall include in the citation a charge that the violation was willfully committed, or committed with gross negligence, and that it subjected a miner or miners to an imminent danger, with a specific description of the danger or dangers involved.

"(b) If upon any followup inspection of a mine, an authorized representative of the Secretary finds (1) that a violation described in a citation issued pursuant to subsection

(a) has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the Secretary determines that such violation has been abated, except the following persons:

"(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, or an authorized representative of the Secretary, to eliminate the danger described in order;

"(2) Any public official whose official duties require him to enter such area; or

"(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine or an authorized representative of the Secretary, for the proper investigation of the conditions described in the order.

"(c) (1) In the case of a violation of any safety or

health standard which is of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard, and which is caused by an unwarranted failure of such operator to comply with such safety or health standards, the citation shall include a statement to that effect. If, during the same inspection or any subsequent inspection of such mine within ninety days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any safety or health standard and finds such violation to be also caused by an unwarranted failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violations, except those persons referred to in subsection (b) of this section, to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

"(2) If a withdrawal order with respect to any area in a mine has been issued pursuant to paragraph (1) of this subsection, a withdrawal order shall promptly be issued by an authorized representative of the Secretary who finds upon any subsequent inspection the existence in the mine of other unwarranted violations until such time as an inspection of such mine discloses no such violations. Following an inspection of the mine which discloses no unwarranted viola-

tions, the provisions of paragraph (1) of this subsection shall again be applicable to that mine.

"(d) During the abatement period for a violation of the applicable limit on the concentration of respirable dust, the operator of the mine shall cause samples described in section 202(a) of this Act to be taken of the affected area during each production shift.

"As soon as possible after an order relating to failure to abate excessive dust concentrations is issued, the Secretary, upon request of the operator, shall dispatch to the mine involved a person or team of persons, to the extent such persons are available, who are knowledgeable in the methods and means of controlling and reducing respirable dust. Such person or team of persons shall remain at the mine involved for such time as they shall deem appropriate to assist the operator in reducing respirable dust concentration. While at the mine, such persons may require the operator to take such actions as they deem appropriate to insure the health of any person in the mine.

"(e) (1) If, upon any inspection or investigation pursuant to section 104 of this Act, the Secretary or an authorized representative shall find employed at a mine a miner who has not received the requisite safety training under section 317A of this Act, the Secretary or an authorized representative shall issue an order under this section which declare

such miner to be a hazard to himself and to others, and requiring that such miner be immediately withdrawn from the mine, and be prohibited from entering the mine until an authorized representative of the Secretary determines that such miner has received the training required by section 317A of this Act.

"(2) No miner who is ordered withdrawn from a mine under paragraph (1) of this subsection shall be discharged or otherwise discriminated against because of such order; and no miner who is ordered withdrawn from a mine under paragraph (1) of this subsection shall suffer a loss of compensation during the period necessary for such miner to receive such training and for an authorized representative of the Secretary to determine that such miner has received the requisite training.

"(f) Each citation or order issued under this section, or a copy or copies thereof, shall be prominently posted in accordance with section 110 of this Act, and as prescribed in regulations issued by the Secretary.

"(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

"(h) Any order issued under subsection (b) or (c) shall remain in effect until revoked by the Secretary or modi-

fied or vacated by the Commission or the courts pursuant to section 106(c) or 107(a).

"PROCEDURE FOR ENFORCEMENT

"SEC. 106. (a) If, after an inspection or investigation the Secretary issues a citation or order under section 105, he shall, within a reasonable time after the termination of such inspection or investigation, notify the operator by certified mail of the civil penalty proposed to be assessed under section 111(a) for the violation cited and that the operator has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If the citation contains a charge under section 105(a)(2), the Secretary's notification under the subsection shall include a proposed civil penalty closure order under section 111(d) in addition to the proposed civil monetary penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the citation or the proposed penalty or penalties, and no notice is filed by any employee or representative of employees under subsection (c) of this section within such time, the citation and the penalty or penalties, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a notice under

this subsection shall constitute receipt thereof within the meaning of this subsection.

"(b) If the Secretary has reason to believe that an operator has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not end until the entry of a final order by the Commission, in the case of any review proceedings under this section initiated by the operator wherein the Commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements), the Secretary shall notify the operator by certified mail of such failure and of the penalty proposed to be assessed under section 111 by reason of such failure, and that the operator has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the operator fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency. Refusal by the operator or his agent to accept certified mail containing a notification issued under this subsection shall

constitute receipt thereof within the meaning of this subsection.

"(c) (1) No person shall discharge or in any manner discriminate against or interfere with the exercise of the statutory rights of any mine employee or applicant for employment subject to this Act because such employee has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the employee's labor or health and safety representative of an alleged danger or safety or health violation in the mine, or because such employee is the subject of medical evaluations and potential transfer under a standard published pursuant to section 102 (a) of this Act, or because such employee has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others of any statutory right afforded by this Act.

"(2) Any mine employee or applicant for employment who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he

deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the mine employee or applicant for employment, alleging such discrimination or interference and proposing an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section) and thereafter shall issue an order. based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief; and such order shall become final thirty days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee to his former position with back pay and interest. The complaining employee or applicant may present additional evidence on his own behalf during any hearing held pursuant to this paragraph.

"(3) Within ninety days of the receipt of a complaint filed under paragraph (2) of this subsection, the Secretary shall notify the mine employee or applicant for employment,

in writing, of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within thirty days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1) of this subsection. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate, including, but not limited to, an order requiring the rehiring or reinstatement of the mine employee or applicant for employment to his former position with back pay and interest. Such order shall become final thirty days after its issuance. Whenever an order is issued sustaining the employee's charges under this paragraph, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the mine employee or applicant for employment for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. Pro-

ceedings under this section shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this paragraph shall be subject to judicial review in accordance with section 107 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of section 109 and 111 (a) of this title.".

"(d) If, within fifteen working days of receipt thereof, an operator of a mine notifies the Secretary that he intends to contest the issuance or modification of an order issued under section 105, or a notification issued under subsection (a) or (b) of this section, or the reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 105, or any miner or representative of miners notifies the Secretary of an intention to contest the issuance, modification, or termination of any order issued under section 105, or the reasonableness of the length of time set for abatement by a citation or modification thereof issued under section 105, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section), and thereafter shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation, order, or proposed penalty, or directing other appropriate relief; such order shall

become final thirty days after its issuance. The rules of procedure prescribed by the Commission shall provide affected miners or representatives of affected miners an opportunity to participate as parties to hearings under this section. The Commission shall take whatever action is necessary to expedite proceedings for hearing appeals of orders issued under section 105. The Commission may not grant temporary relief from the issuance of any order under subsection 105 (c) of this Act.

"JUDICIAL REVIEW

"SEC. 107. (a) Any person adversely affected or aggrieved by an order of the Commission issued under this Act may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the operator has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court within thirty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have exclusive jurisdiction of the proceeding and of the question

determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside, in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings such respect

to question of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Commission may modify or set aside its original order by reason of such modified or new findings of fact. Upon the filing of the record with it, after such remand proceedings, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the operator has its principal office or in the Court of Appeals for the District of Columbia Circuit, and the provision of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within thirty days after issuance of the Commissioner's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such thirty-day period. In any such case, as well as in the case of a noncontested citation or

notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 106, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the operator named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 111, in addition to invoking any other available remedies.

"PROCEDURES TO COUNTERACT DANGEROUS CONDITIONS

"SEC. 108. (a) If, upon any inspection or investigation of a mine which is subject to this Act, an authorized representative of the Secretary finds that conditions of practices in such mine are such that an imminent danger exists, such representative shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 105 (b), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such imminent danger no longer exists. The issuance of an order under this subsection shall not preclude the issuance of a citation under section 105 or the proposing of a penalty under section 111.

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"(b) (1) If, upon any inspection or investigation of a mine, an authorized representative of the Secretary finds (A) that potentially dangerous conditions exist therein which have not yet resulted in an imminent danger, (B) that such conditions cannot be effectively abated through the use of existing technology, and (C) that reasonable assurance cannot be provided that the continuance of mining operations under such conditions will not result in an imminent danger, he shall determine the area throughout which such conditions exist, and thereupon issue a notice to the operator of the mine or his agent of such conditions, and shall file a copy thereof, incorporating his findings therein, with the Secretary and with the representatives of the miners of such mine. Upon receipt of such copy, the Secretary shall cause such further investigation to be made as he deems appropriate, including an opportunity for the operator or a representative of the miners to present information relating to such notice.

"(2) Upon the conclusion of such investigation and an opportunity for a public hearing upon request by any interested party, the Secretary shall make findings of fact, and shall, by decision incorporating such findings therein, either cancel the notice issued under this subsection or issue an order requiring the operator of such mine to cause all persons in the area affected, except those persons referred to in sec-

tion 105(b), to be withdrawn from, and be prohibited from entering, such area until the Secretary, after a public hearing affording all interested persons an opportunity to present their views, determines that such conditions have been abated. Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5 of the United States Code but without regard to subsection (a) (3).

"(c) Findings and orders issued pursuant to subsection (a) of this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger, and all orders issued pursuant to this section shall contain a description of the area of the mine throughout which persons must be withdrawn and prohibited.

"(d) Each finding made and order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all of such findings and orders shall be in writing, and shall be signed by the person making them. Any order issued pursuant to subsection (a) or (b) may be annulled, canceled, or revised by an authorized representative of the Secretary. Any order issued under subsection (a) or (b) shall remain in effect until revoked by the Secretary or modified or vacated by the Commission, or the courts pursuant to section 107(a) or 108(e).

"(e) (1) Any operator notified of an order under this

section or any representative of miners notified of the issuance, modification, or termination of such an order may apply to the Commission within ten days of such notification for annulment or revision of such order. The Commission shall forthwith afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a) (3) of such section) and thereafter shall issue an order, based upon findings of fact, vacating, affirming, modifying, or terminating the Secretary's order. The Commission may not grant temporary relief from the issuance of any order under subsection (a) of this section.

"(2) The Commission shall take whatever action is necessary to expedite proceedings under this subsection.

"INJUNCTIONS

"SEC. 109. (a) (1) The Secretary may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (a) violates or fails or refuses to comply with any order or decision issued under this Act, or (b) interferes with, hinders, or delays the Secretary or his authorized representative, or the Secretary of Health, Education, and Welfare or his authorized representative, in carrying out the provisions of

the Act, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the Secretary or the Secretary of Health, Education, and Welfare in furtherance of the provisions of this Act, or (f) refuses to permit access to, and copying of, such records as the Secretary or the Secretary of Health, Education, and Welfare determines necessary in carrying out the provisions of this Act.

"(2) The Secretary may institute a civil action for relief including permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the mine is located or in which the operator of such mine has his principal office whenever the Secretary believes that the operator of a mine is engaged in a pattern of violation of the health and safety standards of this Act, which in the judgment of the Secretary constitutes a continuing hazard to the health or safety of miners.

"(b) In any action brought under subsection (a) of this section, the court shall have jurisdiction to provide such relief as may be appropriate. In the case of an action under subsection (a) (2), the court shall in its order require such assurance or affirmative steps as it deems necessary to assure

itself that the protection afforded to miners under this Act shall be provided by the operator. Temporary restraining orders shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure, as amended, except that the time limit in such orders, when issued without notice, shall be seven days from the date of entry. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it. In any action instituted under this section to enforce an order or decision issued by the Commission or the Secretary after a public hearing in accordance with section 554 of title 5 of the United States Code, the findings of the Commission or the Secretary, as the case may be, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"POSTING OF NOTICES, ORDERS, AND DECISIONS

"SEC. 110 (a) At each mine subject to this Act there shall be maintained an office with a conspicuous sign designating it as the office of the mine, and a bulletin board at such office or at some conspicuous place near an entrance of the mine, in such manner that notices, orders, citations, and decisions required by law or regulation to be posted on

the mine bulletin board may be posted thereon, be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any notice, order, citation, or decision required by this Act to be given to an operator shall be delivered to the office of the affected mine, and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent for not less than thirty days.

"(b) The Secretary shall (i) cause a copy of any notice, order, citation, or decision required by this Act to be given to an operator to be mailed immediately to a representative of the miners in the affected mine, and (ii) cause a copy thereof to be mailed to the public official or agency of the State charged with administering State laws, if any, relating to health or safety in such mine. Such notice, order, citation, or decision shall be available for public inspection.

"(c) In order to insure prompt compliance with any notice, order, citation, or decision issued under this Act, the authorized representative of the Secretary may deliver such notice, order, citation, or decision to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, citation, or decision.

"(d) Each operator of a mine subject to this Act shall file with the Secretary the name and address of such mine

and the name and address of the person who controls or operates the mine. Any revisions in such names or addresses shall be promptly filed with the Secretary. Each operator of a mine subject to this Act shall designate a responsible official at such mine as the principal officer in charge of health and safety at such mine, and such official shall receive a copy of any notice, order, citation, or decision issued under this Act affecting such mine. In any case, where the mine is subject to the control of any person not directly involved in the daily operations of the mine, there shall be filed with the Secretary the name and address of such person and the name and address of a principal official of such person who shall have overall responsibility for the conduct of an effective health and safety program at any mine subject to the control of such person, and such official shall receive a copy of any notice, order, citation, or decision issued affecting any such mine. The mere designation of a health and safety official under this subsection shall not be construed as making such official subject to any penalty under this Act.

"PENALTIES

"SEC. 111. (a) The operator of a mine in which occurs a violation of a provision of this Act or a safety or health standard prescribed by or under this Act, or any rule, order, or regulation promulgated pursuant to this Act, shall be

assessed a civil penalty of not more than $10,000 for each such violation.

"(b) Any operator who fails to correct a violation for which a citation has been issued under section 105(a) within the period permitted for its correction (which period shall not end until the entry of a final order by the Commission, in the case of any review proceedings under section 106 initiated by the operator wherein the Commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 107 initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), may be assessed a civil penalty of not more than $1,000 for each day during which such failure or violation continues.

"(c) Whenever a corporate operator violates a provision of this Act or a safety or health standard prescribed by or under this Act, or any rule, order, or regulation promulgated pursuant to this Act, any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation shall be subject to the same civil penalties,

fines, and imprisonment that may be imposed upon a person under subsection (a), (b), (e), (f), or (g) of this section.

"(d) Any operator who willfully, or with gross negligence, violates a provision of this Act or a safety or health standard prescribed by or under this Act, or any rule, order, or regulation promulgated pursuant to this Act, and thereby causes a miner or miners to be subjected to imminent danger, shall be subject to a civil penalty closure order by the Commission, which order shall: (i) order the mine closed for a specified period not to exceed thirty working days, (ii) provide that the mine may not be reopened after such period except upon a subsequent order and finding by the Commission that no unabated safety or health violations exist at such mine (except violations for which the period for abatement has not expired), and (iii) provide that during the period of closure the operator shall pay the miners at their regular hourly rates for the hours they would have worked had the mine not been ordered closed, except any miner or miners found by the Commission to have willfully or with gross negligence contributed to the violation or violations which gave rise to the closure order.

"(e) Any operator who willfully violates a provision of this Act or a safety or health standard prescribed by or under this Act, or any rule, order, or regulation promulgated pursuant to this Act, shall, upon conviction, be punished by a

fine of not more than $25,000 or by imprisonment for not more than one year, or by both; except that if the conviction is for a violation committed after a first conviction of such person for any violation of this Act, punishment shall be a fine of not more than $50,000 or imprisonment for not more than five years, or both.

"(f) Any person who gives advance notice of any inspection to be conducted under this Act shall, upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both.

"(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

"(h) Any operator who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to $10,000 for each violation.

"(i) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty assessed by the Commission of not more than $250 for each occurrence of such violation.

"(j) Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this Act, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be punished by a fine of not more than $25,000 or by imprisonment for not more than one year, or by both.

"(k) The Commission shall have authority to access all civil penalties and to issue all civil penalty closure orders provided in this Act. In assessing civil monetary penalties, the Commission shall give due consideration to the gravity of the violation, the good faith of the person charged, the history of previous violations, and the appropriateness of the penalty with respect to the size of the business of any mine operator being charged: *Provided,* That, in proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

"(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States.

"(m) This section shall not be applicable with respect to title IV of this Act.

"ENTITLEMENT OF MINERS

"SEC. 112. If a mine or area of a mine is closed by an order issued under section 104, section 105, or section 108 of this title, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a mine or area of a mine is closed by an order issued under section 105 or section 108 of this title for a failure of the operator to comply with any health or safety standard, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the

lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 104, section 105, or section 108 of this Act, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such time or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5, United States Code.

"ADMINISTRATIVE PROVISIONS

"SEC. 113. (a) The Secretary is authorized and directed to administer the provisions of this Act through a Mine Safety and Health Administration established under section 402 of the Federal Mine Safety and Health Amendments Act of 1977. The Secretary, acting through the Assistant Secretary for Mine Safety and Health, shall have authority to appoint, subject to the civil service laws, such officers and employees as he may deem necessary for the administration of this Act, and to prescribe powers, duties, and responsi-

bilities of all officers and employees engaged in the administration of this Act.

"(b) Except as provided in section 518 (a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act.

"THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

"SEC. 114. (a) The Federal Mine Safety and Health Review Commission is hereby established. The Commission shall consist of five members, appointed by the President by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.

"(b) (1) The terms of the members of the Commission shall be six years, except that—

"(A) members of the Commission, first taking office after the date of enactment of the Mine Safety and Health Amendments Act of 1977, shall serve, as designated by the President at the time of appointment, one for a term of two years, two for a term of four years, and two for a term of six years; and

"(B) a vacancy caused by the death, resignation, or

removal of any member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

Any member of the Commission may be removed by the President for inefficiency, neglect of duy, or malfeasance in office.

"(2) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission. The Commission shall appoint such employees as it deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and general pay rates. Upon the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the administrative law judges assigned to the Arlington, Virginia, Facility of the Office of Hearings and Appeals, United States Department of the Interior, shall be automatically transferred in grade and position to the Federal Mine Safety and Health Review Commission. Notwithstanding the provisions of section 559 of title 5 of the United States Code, the incumbent Chief Administrative Law Judge of the Office of Hearings and Appeals of the Department of the Interior assigned to the Arlington, Virginia, facility shall have the option, on the effective date of the Federal

Mine Safety and Health Amendments Act of 1977, of transferring to the Commission as an Administrative Law Judge, in the same grade and position as the other Administrative Law Judges. The Administrative Law Judges (except those presiding over Indian Probate Matters) assigned to the Western facilities of the Office of Hearings and Appeals of the Department of the Interior shall remain with that Department at their present grade and position or they shall have the right to transfer on an equivalent basis to that extended in this paragraph to the Arlington, Virginia Administrative Law Judges in accordance with procedures established by the Civil Service Commission. The Commission shall appoint such additional administrative law judges as it deems necessary to carry out the functions of the Commission. Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code.

"(c) The Commission is authorized to delegate to any group of three or more members any or all of the powers of the Board, except that two members shall constitute a quorum of any group designated pursuant to this paragraph.

"(d) (1) An administrative law judge appointed by the Commission to hear matters under this Act shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, as-

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signed to such administrative law judge by the chief administrative law judge of the Commission or by the Commission, and shall make a decision which constitutes his final disposition of the proceedings. The decision of the administrative law judge of the Commission shall become the final decision of the Commission thirty days after its issuance unless within such period the Commission has directed that such decision shall be reviewed by the Commission in accordance with paragraph (2) of this subsection. An administrative law judge shall not be assigned to prepare a recommended decision under this Act.

"(2) The Commission shall prescribe rules of procedure for its review of the decisions of administrative law judges in cases under this Act and which shall meet the following standards for review (the provisions of section 557(b) of title 5, United States Code, with regard to the review authority of the Commission are hereby expressly superseded to the extent that they are inconsistent with the provisions of paragraphs (A), (B), and (C) of this subsection):

"(A) PETITIONS FOR DISCRETIONARY REVIEW.—

(i) Any party may file and serve a petition for discretionary review by the Commission of a decision of an administrative law judge within thirty days after the issuance of such decision. Review by the Commission

shall not be a matter of right but of the sound discretion of the Commission.

"(ii) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

"(I) A finding or conclusion of material fact is not supported by substantial evidence.

"(II) A necessary legal conclusion is erroneous.

"(III) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

"(IV) A substantial question of law, policy, or discretion is involved.

"(V) A prejudicial error of procedure was committed.

"(iii) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass. Review by the Commission shall be granted only by affirmative vote of two of the Com-

missioners present and voting. If granted, review shall be limited to the questions raised by the petition.

"(B) REVIEW BY COMMISSION AT ITS OWN INITIATIVE.—At any time within thirty days after the issuance of a decision of an administrative law judge, the Commission may in its discretion (by affirmative vote of two of the Commissioners present and voting) order the case before it for review but only upon the ground that the decision may be contrary to law or Commission policy, or that a novel question of policy has been presented. The Commission shall state in such order the specific issue of law, Commission policy or novel question of policy involved. If a party's petition for discretionary review has been granted, the Commission shall not raise or consider additional issues in such review proceedings except in compliance with this paragraph.

"(C) SCOPE OF REVIEW.—For the purpose of review by the Commission under paragraph (A) or (B) of this subsection, the record shall include (i) all matters constituting the record upon which the decision of the administrative law judge was based, (ii) the rulings upon proposed findings and conclusions, (iii) the decision of the administrative law judge, (iv) the petition or petitions for discretionary review, responses thereto, and the Commission's order for review, and

(v) briefs filed on review. No other material shall be considered by the Commission upon review. The administrative law judge's findings and conclusions of fact, as distinguished from policy determinations, shall not be set aside by the Commission unless such findings or conclusions of fact are unsupported by substantial evidence of record. The Commission either may remand the case to the administrative law judge for further proceedings as it may direct or it may affirm, set aside, or modify the decision or order of the administrative law judge in conformity with the record. If the Commission determines that further evidence is necessary on an issue of fact it shall remand the case for further proceedings before the administrative law judge.

"(e) In connection with hearings before the Commission, or its administrative law judges, under this Act, the Commission and its administrative law judges may compel the attendance and testimony of witnesses and the production of books, papers, or documents or objects, and to order testimony to be taken by deposition at any stage of the proceedings before them. Any person may be compelled to appear and depose and produce like documentary or physical evidence, in the same manner as witnesses may be compelled to appear and produce evidence before the Commission and its administrative law judges. Witnesses shall be paid the same fees and

mileage that are paid witnesses in the courts of the United States and at depositions ordered by such courts. In case of a contumacy, failure, or refusal of any person to obey a subpena or order of the Commission or an administrative law judge, respectively, to appear, to testify, or to produce documentary or physical evidence, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides, or transacts business, shall, upon the application of the Commission, or the administrative law judge, respectively, have jurisdiction to issue to such person an order requiring such person to appear, to testify, or to produce evidence as ordered by the Commission or the administrative law judge, respectively, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 115. There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this title.".

MANDATORY SAFETY TRAINING

"SEC. 116. (a) Each operator shall have a safety training program which shall be approved by the Secretary. The Secretary shall promulgate regulations with respect to

such safety training programs no more than one hundred and eighty days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977. Each training program approved by the Secretary shall provide no less than that—

"(1) new miners shall receive no less than forty hours of training if they are to work underground. Such training shall include use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;

"(2) new miners shall receive no less than twenty-four hours of training if they are to work on the surface. Such training shall include use of the self-rescuer device and use of respiratory devices, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned;

"(3) all miners shall receive no less than eight hours of refresher training no less frequently than once each twelve months, except that miners already employed on the effective date of the Federal Mine Safety and Health Amendments Act of 1977 shall receive this

refresher training no more than ninety days after the date of approval of the training plan required by this section;

"(4) any miner who is reassigned to a new task shall receive training in accordance with a training plan approved by the Secretary under this subsection in the safety and health aspects specific to that task prior to performing that task.

"(b) Any safety training provided under subsection (a) of this section shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional costs they may incur in attending such training sessions.

"(c) Upon completion of each training program, each operator shall certify, on a form approved by the Secretary, that the miner has received the specified training in each subject area of the approved safety training plan. A certificate for each miner shall be maintained by the operator, and shall be available for inspection at the mine site, and a copy thereof shall be given to each miner at the completion of such training. When a miner leaves the operator's employ, he shall

be entitled to a copy of his safety training certificates. False certification by an operator that training was given shall be punishable under section 111 (a) and (h) of this Act; and each safety training certificate shall indicate on its face, in bold letters, printed in a conspicuous manner the fact that such false certification is so punishable.

"(d) Within one hundred and eighty days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977, the Secretary shall publish regulations which shall provide that mine rescue teams comprised of Federal mine inspectors shall be maintained at each district, subdistrict, and, where practicable, field office of the Mine Safety and Health Administration.".

AMENDMENTS WITH RESPECT TO INTERIM MANDATORY HEALTH STANDARDS

SEC. 202. (a) (1) Section 201 (a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out "coal mines" and inserting in lieu thereof "mines, as applicable".

(2) Section 201 (b) of such Act is amended by striking out "coal mine" and inserting in lieu thereof "mine".

(b) Section 205 of such Act is amended by striking out "coal mining" and inserting in lieu thereof "mining".

(c) Section 206 of such Act is amended by striking out

"coal mine" each time it appears therein and inserting in lieu thereof "mine".

(d) (1) Section 202(e) of the Federal Coal Mine Health and Safety Act of 1969 is amended to read as follows:

"(e) References to concentrations of respirable dust in this title means the average concentration of respirable dust measured with a device approved by the Secretary and the Secretary of Health, Education and Welfare.".

(2) Section 318 of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking subsection (k) thereof.

AMENDMENTS WITH RESPECT TO INTERIM MANDATORY SAFETY STANDARDS FOR UNDERGROUND COAL MINES

SEC. 203. Title III of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking section 301 (c) and (d) thereof.

TITLE III—MISCELLANEOUS PROVISIONS

TRANSFER MATTERS

SEC. 301. (a) Except with respect to the functions assigned to the Secretary of the Interior pursuant to section 501 of the Federal Coal Mine Health and Safety Act of 1969, the functions of the Secretary of the Interior under the Federal Coal Mine Health and Safety Act of 1969, as amended, and the Federal Metallic and Nonmetallic Mine

Safety Act of 1966 are transferred to the Secretary of Labor, except those which are expressly transferred to the Commission by this Act.

(b) (1) The mandatory standards relating to mines, issued by the Secretary of the Interior under the Federal Metallic and Nonmetallic Mine Safety Act of 1966 and standards and regulations under the Federal Coal Mine Health and Safety Act of 1969 which are in effect on the date of enactment of this Act shall remain in effect as standards applicable to metallic and nonmetallic mines and to coal mines respectively under the Federal Mine Safety and Health Act of 1977 until such time as the Secretary shall issue new or revised standards.

(2) Within sixty days after the effective date of this Act, the Secretary shall establish an advisory committee under section 103 of the Federal Mine Safety and Health Act of 1977 which shall, within one hundred and eighty days after the date of the establishment of such advisory committee, review the advisory health and safety standards issued by the Secretary of the Interior under the Federal Metallic and Nonmetallic Mine Safety Act of 1966 and recommend to the Secretary which of those standards (or any modification of such standards which does not substantially diminish the health and safety of miners) should be promulgated as health and safety standards under this section.

The Secretary shall publish, within sixty days after any recommendations of the advisory committee under this paragraph, each of the standards so recommended for adoption with or without modification as a health and safety standard under this section by publication of such standard in the Federal Register, and afford interested persons a period of twenty-five days after publication to submit written data or comment. Within thirty days after the close of the comment period specified in the preceding sentence, the Secretary shall promulgate by publication in the Federal Register a standard based upon the advisory committee recommended with or without modification, and the data and comments received thereon, unless the Secretary determines that such a standard will not promote the health and safety of miners and publishes an explanation of that determination in the Federal Register.

(3) All interpretations, regulations, and instructions of the Secretary of the Interior or the Director of the Bureau of Mines, in effect on the date of enactment of this Act and not inconsistent with any provision of this Act or any amendment made by this Act, shall be published in the Federal Register and shall continue in effect until modified or superseded in accordance with the provisions of this Act.

(c) (1) All unexpended balances of appropriations, personnel, property, records, obligations, and commitments

which are used primarily with respect to any function transferred under the provisions of subsection (a) of this section to the Secretary shall be transferred to the Department of Labor or the Commission, as appropriate. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Secretary of Labor shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to him under this Act.

(2) All orders, decisions, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are

transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Secretary of Labor or the Federal Mine Safety and Health Review Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Secretary, then such suit shall be continued by the Secretary of Labor. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this

section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Secretary as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(d) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any officer or officer of such agency or department.

MINE SAFETY AND HEALTH ADMINISTRATION

SEC. 302. (a) There is established in the Department of Labor, a Mine Safety and Health Administration to be headed by an Assistant Secretary of Labor for Mine Safety and Health appointed by the President, by and with the advice and consent of the Senate. The Secretary is authorized and directed, except as specifically provided otherwise, to carry out his functions under the Federal Mine Safety and Health Amendments Act of 1977 through the Mine Safety and Health Administration.

(b) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following paragraph:

"(109) Assistant Secretary of Labor for Mine Safety and Health.".

(c) (1) Section 5145 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(64) Chairman, Federal Mine Safety and Health Review Commission.".

(2) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(109) Members, Federal Mine Safety and Health Review Commission.".

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

AMENDMENTS WITH RESPECT TO MINE SAFETY AND HEALTH ADMINISTRATION

SEC. 303. (a) (1) Section 501 (a) of the Federal Coal Mine Health and Safety Act of 1969 is amended by striking out the word "coal" wherever it appears therein, and by striking out "The Secretary and" and inserting in lieu thereof "The Secretary of the Interior and".

(2) Section 501 (a) of the Federal Coal Mine Health and Safety Act of 1969 is further amended by inserting immediately after paragraph "(10)" thereof, the following new paragraph:

"(11) to, upon the written request by any operator or authorized representative of miners, specifying with reasonable particularity the grounds upon which such request is made determine whether any substance normally found in a mine has potentially toxic effects in the concentrations normally found in the mine or whether any physical agents or equipment found or used in a mine has potentially hazardous effects, and shall submit such determinations to both the operators and miners as soon as possible;" and

by renumbering the current paragraph "(11)" as "(12)".

(3) Section 501 (b) of such Act is amended by striking out the word "coal" each time it appears therein and by adding after the word "Welfare" the following: "through the National Institute for Occupational Safety and Health established under the Occupational Safety and Health Act of 1970"; and by striking out the period at the end thereof and inserting "of the Interior in coordination with the Secretary".

(4) Section 501 (d) of such Act is amended by striking out the word "coal".

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(5) Section 501 of such Act is further amended by adding at the end thereof the following new subsection:

"(h) The Secretary shall compile accurate statistics on work injuries and illnesses occurring in the mines subject to this Act.".

(b) Section 502 of such Act is amended by striking out the word "coal" each time it appears therein.

(c) (1) Section 503 (a) of such Act is amended by striking out the word "coal" each time it appears therein.

(2) Section 503 (b) of such Act is amended by striking out the word "coal" each time it appears therein.

(d) (1) Section 503 (f) of such Act is amended by striking out the word "coal".

(2) Section 503 (g) of such Act is amended by striking out the word "coal".

(e) (1) Section 505 of such Act is amended by striking out "the mining of coal" and inserting in lieu thereof "in mining".

(2) Section 505 of such Act is further amended by changing the period at the end of the second sentence thereof to a colon, and adding the following language: "*Provided however*, That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning

mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to the extent possible to their previous experience in the particular type of mining operation where such inspections are to be made."

(f) Section 506(b) of such Act is amended by striking out the word "coal" each time it appears therein.

(g) (1) Section 511(a) of such Act is amended by striking out the word "coal".

(2) Section 511(b) of such Act is amended by striking out the word "coal".

(h) Section 502 of such Act is amended by adding the following new subsection (c):

"(c) (1) The National Mine Health and Safety Academy shall be maintained as an agency of the Department of the Interior. The Academy shall be responsible for the training of mine safety and health inspectors under section 505 of this Act, and in training of technical support personnel of the Mine Safety and Health Administration established under section 302 of the Federal Mine Safety and Health Amendments Act of 1977; and for any other training programs for mine inspectors, mining personnel, or other persons as the Secretaries of Labor and Interior shall designate. In performing this function, the Academy shall have the authority to enter into cooperative educational and training agreements with educational institutions, State govern-

ments, labor organizations, and mine operators and related industries. Such training shall be conducted by the Academy in accordance with curriculum needs and assignment of instructional personnel established by the user.

"(2) In performing its function pursuant to this section, the National Mine Health and Safety Academy shall use the facilities and personnel of the Department of the Interior, and such other personnel as shall be mutually agreed upon by the Secretaries of Labor and Interior. The Secretary of the Interior, upon request by the Academy, shall appoint or assign to the Academy such officers and employees as the Director of the Academy deems necessary for the performance of the duties and functions of the Academy.

"(3) The Secretary of the Interior shall conduct his safety research responsibilities under section 501 of this Act in coordination with the Secretary of Labor, and the Secretaries of Labor and the Interior are authorized to enter into contractual or other agreements for the performance of such safety related research.".

(i) Section 7(b)(5) of the Small Business Act is amended by striking out the word "coal".

SAVINGS PROVISION

SEC. 304. Nothing contained in this Act or any amendment made by this Act shall be construed to reduce the number of inspectors engaged in enforcement of the Fed-

eral Coal Mine Health and Safety Act of 1969 and Federal Metallic and Nonmetallic Mine Safety Act of 1966 as in effect prior to the effective date of this Act or to reduce the number of inspectors engaged in the enforcement of the Occupational Safety and Health Act of 1970.

BUDGET PROVISION

SEC. 305. In the preparation of the Budget message required under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), the President shall set forth as separate appropriation accounts amounts required for appropriation for mine health and safety pursuant to the Federal Mine Health and Safety Act of 1977 and for occupational safety and health pursuant to the Occupational Safety and Health Act of 1970.

REPEALER

SEC. 306. The Federal Metal and Nonmetallic Mine Safety Act of 1966 is repealed.

EFFECTIVE DATE

SEC. 307. This Act and the amendments made by this Act shall take effect on the first day of July 1978 except that the Secretary of Labor is authorized to establish such rules and regulations as may be necessary for the efficient transfer of functions provided under this Act.

The CHAIRMAN. At our hearings, we will hear from spokesmen of industry, labor, the agencies of the executive branch who are now responsible for administration of our current programs, as well as from the general public. All share our common concern for the health and safety of our Nation's miners.

We welcome the witnesses. We know that they are essential to our task. Our Nation, the mining industry, and our miners must have the best and most far-reaching health and safety laws available. This is the goal of S. 717, the Federal Mine Safety and Health Amendments Act of 1977.

We have worked together in all of our activities in this area, Senator Schweiker, particularly within the last 10 years, that we have been together. We are still together. I would offer this opportunity to give us your opening words.

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

First of all, I want to say I am very pleased to be joining the Chairman in his effort and leadership in this area and to be a cosponsor of this bill.

As this committee has articulated from time to time, mining is still the most dangerous and hazardous occupation in the United States, and even though we have made some great progress in recent years, 1 out of every 1,500 miners is killed on the job or dies from a job-related illness. This compares to 1 out of every 2,800 railroad workers, or 1 out of every 4,000 construction workers, or 1 out of 12,400 industrial workers covered by OSHA.

As an actual fact, 1 miner is killed every day and 66 miners suffer serious injury every working day, based on 1974 figures. So, it shows that even though we have made progress, even though we are doing better than we did, we still have a way to go.

I am pleased to see the hearings being opened here this morning and the effort being made to do better and not to have mining as the most hazardous occupation in the United States. I also want to compliment the steelworkers because they have been leaders in this field and they have done all within their authority and jurisdiction to do what they can to make sure the Government does a better job of protecting workers. And their interests and responsibilities have been well known and well articulated to this committee. I am pleased to be here for the opening of these important hearings, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Schweiker.

I know other members will be here from time to time. We are all familiar with the schedules around here. We are all under multiple assignments. I know Senator Javits is in another hearing of one of the subcommittees. He will be here shortly, I hope.

Senator Huddleston has a statement he wanted to be here to present personally. I am going to include it in the record at this point.

STATEMENT OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator HUDDLESTON. Mr. Chairman, I want to begin by congratulating the Human Resources Committee for their continuing efforts to improve safety in the mining industry and, in particular, to thank

the distinguished chairman—Mr. Williams—for his longstanding commitment to this cause.

Coal is our most abundant energy source. It fueled the industrial revolution which made the United States a world power. And now, it promises to be one of the most significant contributors to our achievement of energy independence. But, as a Senator from the Nation's leading coal producing State, I know firsthand that mining that coal is always grueling and too often debilitating or deadly.

Mining is the most dangerous occupation in the Nation. As the committee learned in its work on this problem last year, the rate of work related injuries and illnesses in the mining industry still exceeds the all industry rate by 14 percent. One out of every 1,500 mine workers is killed on the job or dies from work related injuries or illnesses, compared to 1 out of every 12,400 for other workers. In 1976, the hazards of coal mining left 141 dead, 42 of those in my State of Kentucky alone, and 13,944 disabled. Already this year, 37 have died.

It doesn't have to be this way, and we owe it to the miners to make every effort to change the situation. The bill before you today, I believe, is a very positive step in the right direction.

S. 717, the Federal Mine Safety and Health Amendments Act of 1977, is a very complex piece of legislation and I will not attempt to comment on all of its major provisions. However, there are some major points which I believe go to the heart of the bill and deserve particular emphasis.

First, the bill tries to assure that a high degree of autonomy for the Mining Enforcement and Safety Administration (MESA), and its separation from other occupational safety programs, will be preserved after its transfer to the Department of Labor from the Department of Interior. Mining is a highly specialized field, and it is vitally important that the technical expertise of MESA not be lost and that its enforcement activities not be diminished. This bill creates a Mine Safety and Health Administration by statute rather than secretarial designation, to be headed by an Assistant Secretary of Labor for Mine Safety and Health rather than by an Administrator. It requires that a separate budget account be maintained for MESA to prevent its comingling with other worker safety programs. It provides that the number of inspectors engaged in the enforcement of the coal and metal acts, and in the enforcement of other worker safety programs by other agencies in the Department, shall not be diminished. It requires that, even within MESA, in assigning inspectors, due consideration is to be given to their previous experience in either the coal or hard rock segments of the mining industry. And, I would urge further that MESA be authorized whatever additional personnel may prove necessary to carry out its expanded duties under this bill.

With regard to enforcement, the bill puts new emphasis where I believe it belongs—on serious and repeat offenders. The coal industry as a whole is making a good faith effort to comply with Federal mine regulations. But, too often we find a reluctance to comply until it becomes economical to run a safe mine than an unsafe one. Consequently, I think it is entirely appropriate to authorize civil penalty closure orders in cases of willful or gross negligence resulting in imminent danger to the miner, given sufficient safeguards to assure that

this sanction cannot be invoked capriciously or unfairly. Important too in dealing with repeat offenders is the provisions granting the U.S. district court power to formulate an appropriate remedy, including injunctive relief, to insure that miners are afforded the act's protections where the Secretary can show, based on past violations and other facts, that there is a pattern of violations which constitute a continuing hazard to the health and safety of miners.

We cannot afford to overlook, however, the need for cooperation from the miners themselves and the importance of their being fully educated and trained in safe work practices. I have been working with MESA over the past two year to upgrade safety training of miners in my own State, and I very enthusiastically support a statutory minimum of 40 hours safety training for all new underground miners, 24 hours for new surface miners, 8 hours annual retraining, and specialized training when a miner changes jobs.

Finally, I want to specifically endorse the requirement in this bill that mine rescue teams comprised of Federal mine inspectors be maintained at each district, subdistrict, and, where practicable, field office of MESA.

This is by no means a complete list of my concerns with regard to this legislation, but it does highlight some of the provisions which I consider particularly important. I look forward to continuing to work with the committee in resolving any obstacles which remain to making this bill as effective and equitable as possible.

The CHAIRMAN. We are particularly pleased our leadoff witness is from the United Steelworkers of America, president-elect, Lloyd McBride.

STATEMENT OF LLOYD McBRIDE, PRESIDENT-ELECT, UNITED STEELWORKERS OF AMERICA, ACCOMPANIED BY JACK SHEEHAN, DIRECTOR, STEELWORKERS LEGISLATIVE APPEAL; FRANK McKEE; AND MARCO VESTICH

Mr. MCBRIDE. Mr. Chairman, the opening statements of yourself and Senator Schweiker indicate very clearly that you have a very firm grasp on the problem, its complexities and seriousness. I am gratified to hear your statement, and certainly it augurs well for the future of the bill.

My formal statement follows:

Mr. Chairman, my name is Lloyd McBride. I am president-elect of the United Steelworkers of America.

I would like to submit for the record the text of my full statement, and for the hearing proceed with a summary of that statement.

I might mention, Mr. Chairman, that we in the steelworkers have just completed an election and that is a process which always seems to bring into focus the purposes and objectives of the institution engaged in the election. From my personal and professional experience, I know that workers in industry and mines are determined that the quality of their lives, indeed the safety of their lives, not be needlessly jeopardized.

We can, and do, utilize the collective bargaining mechanism to bring about changes in our working conditions. However, we also have long recognized the need for Federal responsibility. While that responsi-

bility must be expressed in terms of the promulgation of standards and in terms of inspections, the caliber of those activities is directly affected by the caliber of the mine safety laws.

I am here today to express our concern that there is an urgent need for a substantial improvement in the caliber of the safety law covering metal miners. That improvement can be accomplished through S. 717. The Steelworkers fully supports S. 717 and we are indebted to your leadership, Mr. Chairman, in the development of this very much needed legislation.

You have been a foremost leader in the field of occupational safety and health, and we are most grateful for your persistence over the past number of years in moving toward reform of the antiquated safety law covering our members in the mining industry.

Our union is a major mining union in that it represents over 100,000 miners in iron ore, nonferrous, and quarry mines. It is on behalf of those members in the metal and nonmetallic mining sector that I appear here today. It hardly need be stated that mining is extremely dangerous work. The death rate for miners is higher than for any other group of workers.

The latest listing by the National Safety Council shows that miners are killed at a rate which is more than four times higher than the national average for occupational deaths. We learned, Mr. Chairman, in 1972, that the weakness of the existing metal and nonmetallic law is more than just an academic concern. Ninety-one miners—most of them members of our union—died that year at the Sunshine Mine in Idaho.

Ever since that disaster we have redoubled our efforts to accomplish three major objectives: (1) upgrade the statutory protection for hard rock miners so that their protection is comparable to the protion for coal miners and general industry workers; (2) unify mine safety laws into a single statute, and (3) transfer implementation of the mine safety program from the Department of the Interior to the Department of Labor. S. 717 achieves all three of these basic objectives.

My full statement provides a fuller discussion of each of the three needs and the manner in which the legislation addresses them. I will limit comments here, though, to just a few of these points.

UPGRADING METAL AND NONMETALLIC MINE SAFETY LAW

With regard to upgrading the Metal and Nonmetallic Act, there should be no debate as to need. Since its enactment 11 years ago, we have learned a great deal about what needs to be in a workplace safety and health law to make it effective. The 1966 law is blatantly lacking in standard making and enforcement authorities. It does not address itself at all to the problem of occupational health and is silent on basic worker rights. In short, metal and nonmetallic miners have a long way to go to catch up with coal miners and general industry workers.

HEALTH HAZARDS

The shortcomings in the metal law not due to any absence of need for a strong statutory protection. Besides the obvious fact that safety hazards are manyfold in any mining situation, especially in

underground mining, we are learning increasingly of the wide range of critical occupational health problems in metal and nonmetallic mining that have been virtually ignored from a regulatory standpoint.

Problems related to silica are present in virtually every type of hardrock mining. Radioactive radon daughters, once thought to be a problem associated mainly with uranium mining is now being found in other types of mines as well. The presence of fibrous metals and ore bodies presents a serious health concern in many mining operations, and the widespread use of diesel engines in the underground caverns is creating a great many potential health problems.

Indeed, NIOSH officials have testified that; "as a group, workers in metal mines and mills are exposed to an even wider range of pneumoconiosis-producing dust than are coal miners. They are also exposed to a number of carcinogens, including asbestos, arsenic, uranium and beryllium." All this points to the critical need for a large-scale research and regulatory program for health hazards in the metal and nonmetallic mining industry. S. 717 will provide the base for this type of effort.

WORKER RIGHTS

S. 717 also establishes for metal miners basic statutory rights such as walk around on inspection and, in some cases, the right to medical examinations to prevent injurious exposures. But, these statutory rights are meaningless if the workers are fearful that exercising those rights will lead to a loss of pay or a job loss. S. 717, therefore, couples these rights with important wage protections.

Under the bill, the miners' wages are protected when they are involved with enforcement activities. Specifically, this means protection during walkarounds and during closure orders. It also means that if a promulgated standard requires medical examinations to guard against overexposure to a hazard, and if the examination shows that the miner needs to be transferred to another job because he is on the threshold of injury, he shall be entitled to that transfer without any loss of pay.

It should be emphasized, Mr. Chairman, that this is not a substitute for workers' compensation. It is an effort to present the need for that worker to become a worker-compensation case. I submit, Mr. Chairman, that these wage loss protections—which are concepts already contained in the Coal Mine Safety Act—are more properly the role of congressional action than left to collective bargaining.

The burden of making a conceptual right an actual right should not be left to the give-and-take of a private bargaining realm. If the Congress is going to make the public decision to declare the existence of the worker rights, it also must put the weight of public policy behind the realization of those rights. Therefore, we strongly support the wage protection provisions in S. 717.

SINGLE MINE SAFETY LAW

As with the need to upgrade the 1966 law, there should be no controversy over S. 717's merger of mine safety coverage into one law. There may be a need for differing standards for coal and noncoal miners—which S. 717 permits—but there certainly can be no rationale for differing standard making and enforcement procedures.

One source of resistence to a single bill seems to come from those who would oppose any improvement in the Coal Mine Safety Act. The final statutory product that would cover all miners under S. 717 is indeed an improvement over the existing Coal Mine Safety Act in some necessary ways. Those improvements, however, do not place any new substantive burdens or responsibilities upon the coal mine operators.

The changes in the Coal Mine Safety Act are generally of two types; first, there are administrative changes, such as, more efficient procedures to bring about a quicker resolution of contested citations and penalties. There should be no reason for the mine operators to oppose this type of change unless they are looking for interminable delay.

The second major change is the addition of two new closure orders. These new enforcement tools, however, are designed for the worst of cases where the operator has shown that despite the normal penalty scheme he continues to violate flagrantly the health and safety requirements. To guard against arbitrary use of these closure orders by the Secretary, they can be applied only by judicial action. They would be used then only infrequently and should be of no concern to the vast majority of mine operators.

TRANSFER OF JURISDICTION

A great deal has been said over the past several years, Mr. Chairman, about the obvious conflict of mission that exists within the Interior Department because of its dual responsibilities for safety regulations and resource extraction. I need not elaborate on it here except to point out that Secretary Andrus put his finger on the problem as recently as last week. He stated that mining and other extraction interests have dominated the Interior Department for years.

The fact that mine safety efforts have had to compete with those interests within the Department has had a damaging effect on the safety program. There is no way to escape the conflict of mission problem as long as MESA remains in the Interior. Safety and health is far too important a program to be forced to compete with production programs for attention within its own agency. MESA must be placed in the Department of Labor.

Only when it is in the Department of Labor will MESA be divorced from the inappropriate competing and conflicting pressures.

Finally, and very bluntly, Mr. Chairman, metal miners have indeed been on the short end of the stick. The first Coal Mine Safety Act was passed in 1941, but it wasn't until 25 years later that a Metal Safety Act was enacted by Congress. We are now 8 years later trying to catch up to the revised and more appropriate provisions of the 1969 Coal Mine Safety and Health Act.

Last year 222 miners died, and 18,442 miners suffered disabling injuries. That's a disgrace, and it should not be allowed to continued. We hope that the committee can act swiftly on S. 717 so that we can provide a regulatory framework adequate to protect all miners.

Mr. Chairman, I thank you for your attention.

The CHAIRMAN. Thank you very much, Mr. McBride. You have with you your associates in the union. I see Jack Sheehan, who has been, of course, very close to all of the development of our mining

safety and health legislation. We are pleased he is here, Mr. McKee and Mr. Vestich. We are glad we have this opportunity to start our hearings with your testimony.

In how many different mining operations are members of your union employed?

Mr. McBride. We mine everything except coal. That, of course, includes lead, zinc, copper, various exotic minerals, salt, you name it. If it comes out of the ground our members take it out, other than coal.

The Chairman. In your statement you raised certain problems of exposure that creates some known and some suspected health problems—radioactive radon daughters. I will confess that description of the problem is new to me. Is there anybody——

Mr. McBride. It is somewhat new to me and I inquired. I was advised this is a hazard that is more closely identified with uranium. For years it was identified as a gaseous substance that lodges itself on various dust particles and then became inhaled or breathed, and that it caused some serious health damages.

I went to Mr. Sheehan who helped me put this thing together, and I said: "Explain to me about this daughter business too."

The Chairman. What did he tell you, or should we ask him how he explained it to you?

Mr. McBride. Would you explain it the way you explained it to me?

Mr. Sheehan. Let me, Mr. Chairman, indicate that the radon daughters is a technical term to identify a certain kind of gaseous emission that occurs in uranium mines. I think I might even be able to go a little further and talk about alpha particles, but beyond that I can't go much further except to indicate that the miners in the mine atmosphere inhale this through dust and dust particles, and it results in lung cancer.

But, I think the real story to be told about radon daughters is not what it is, but how it is handled, and what a disgraceful situation did occur in our uranium mines back in the 1950's. It was really a sorry disaster. We found out years afterwards that our people who were mining uranium for the Federal Government were not under any protection at all. The closest we came to protection was that the Atomic Energy Commission said they would take care of radiation exposure only after it comes out of the mines but what happens inside the mines, that's not going to be their problem.

For years we came to Congress, as a matter of fact, to say that uranium miners were dying of lung cancer, and the Interior Department at that time did not respond very fully with regard to coming up with a standard in uranium mines. It eventually evolved when the Labor Department, who did not have jurisdiction necessarily over miners but had jurisdiction over the Walsh-Healey Act where they procured this item, could set standards because the Federal Government was procuring it.

The Labor Department promulgated the standard and 1 year afterwards it was out of business because the Government was no longer buying uranium directly. Then, it fell on to the hands of the Interior Department to do something about the uranium standard and one of the first things they did was to promulgate, in the record, variances from the uranium standard that the Labor Department had previously promulgated.

So, radon daughters, Mr. Chairman, is an often remembered source. It sounds like a nice term but it's a disaster as an exposure substance.

The CHAIRMAN. From that answer we get one of the strong arguments for the transfer.

Mr. SHEEHAN. Yes.

The CHAIRMAN. This is an example.

Mr McBRIDE. Very much so.

Mr. SHEEHAN. The Labor Department was the one that promulgated the first standard on radon daughters exposure.

The CHAIRMAN. And when the Government went out of the operation and it went private jurisdiction reverted to Interior. And that Department did not go about strengthening or enforcing the standards but instead began variance from the standard.

Mr. SHEEHAN. Right.

The CHAIRMAN. It is something we will probably use with respect to the need for this transfer. What do you hear about the transfer? It seemed as though there is pretty much of a consensus within the Congress, with some who are not in agreement. Now we hear it is not quite that clear within the administration.

Mr. McBRIDE. We feel there is a very obvious conflict of mission within the Department of the Interior with being expected to fairly enforce the safety objectives of Congress and, at the same time, be saddled with the extraction priorities with which it must comply. We feel, in all fairness, the priority has been put on the wrong part of the program and will continue to be, so long as they have this mixed bag of priorities.

We feel sincerely that we will continue to have these kinds of problems until the enforcement areas are properly in the Labor Department.

The CHAIRMAN. That reasoning prompted us to propose this reorganization and transfer. We appreciate your observations.

I note in your summary—of course, I haven't read your full statement, but it will be included in the record—you state NIOSH officials have testified that as a group, workers in metal mines and mills are exposed to an even wider range of pneumoconioses-producing deaths in our coal mines. They are also exposed to a number of carcinogens, including, asbestos, arsenic, uranium, and beryllium.

NIOSH has not had any statutory authority here in the metal and nonmetallic mines. And yet, you quote them, so this observation comes to NIOSH as information that is gathered despite the fact that no specific responsibility is assigned to NIOSH to recommend any standards under the Metal Act. Are you familiar with what they have been doing because under this bill they will be brought in, not to set the standards, but to advise those who will be the standard setters?

Mr. McBRIDE. I am not familiar with exactly how these conclusions were reached, but I think they are very important. Having access to these opinions expressed by the NIOSH people, we feel it is an important part of this process. This knowledge being available, it should certainly be relied upon by those of us who are striving to get a reasonable degree of safety regulation in these mines, which is fairly obviously lacking now.

I am not sure how NIOSH made these conclusions, but since they did, we readily grab them and rely upon them.

The CHAIRMAN. They will be, under this bill, empowered to suggest health standards but not to promulgate them.

Mr. MCBRIDE. As I understand it, under the proposed bill they would have a kind of factfinding role, and they would produce certain information which would be invaluable and do it under the full authority of the law we are asking to be adopted.

The CHAIRMAN. It would seem to me with what we know now of the effort that goes into standard setting there are certain aspects of standard making that are not within the expert knowledge or administrative background of NIOSH scientific people; for example; the economic impact and other impact statements that must accompany any promulgation of standards.

I think at this point we are right in placing the standard setting with the Department rather than NIOSH. I see assent from Mr. Sheehan, who is with us day in and day out. Is that a feeling you all have?

Mr. MCBRIDE. I think so. NIOSH has a very important role in determining what the scientific facts are. The standards certainly should be established with all the knowledge NIOSH might develop.

The CHAIRMAN. Another point; in your statement you suggested the use of civil penalties would provide additional flexibility in enforcement. We have had opponents of mandatory civil penalties tell us that these would provide a lack of flexibility which is unwise. How do you conclude that imposing a rigid penalty scheme promotes additional flexibility?

Mr. MCBRIDE. First, I understand the civil penalties are directed at specific conditions and that these specific conditions can be easily identified. There is some reason to believe that when these specific conditions are violated it is verging on the deliberate, if not the deliberate. It is a matter of grave concern to the workers and that the civil penalty would very well serve a useful purpose in acquainting all with the importance of complying with these specific provisions.

There has been various ways of describing this. In Missouri we talked about the mule salesman who had a mule he was going to sell, but the person who was going to buy it couldn't very well handle him. He had been described as a docile animal, and so forth. And so, the salesman, when he heard about the problem, took a 2 by 4 and whopped the mule alongside the head. After that, the mule behaved very well. The buyer of the mule simply wanted to know why he did that. He said that was to get that mule's attention. He will behave himself from this point on.

We think the civil penalties are essential in certain kinds of cases in order to keep the attention of people who are in a position to either see that the standard is lived up to, or ignored. And if they are aware there is a penalty for ignoring these standards or for not giving them the proper priority, this would very well serve as the 2 by 4 perhaps to keep their attention focused upon these very important provisions and specific standards that the civil penalty would be called in to play.

So, it is really a matter of gravity. It is a matter of putting it in its proper place, and while these civil penalties do not flow through all sections of the law, they apply to specific and certain conditions.

The CHAIRMAN. What is the situation now in metal and nonmetallic on civil penalties? Could Mr. Sheehan come in on some of this?

Mr. SHEEHAN. Right now, under the Metal Act, there are absolutely no administrative penalties that can be levied. The only penalty that can occur is the idea of closing down a mine. It can be closed when there is imminent danger and when there is a failure to abate; that is our understanding.

I talked to Marco Vestich about this. In many situations even the abatement order has been extended a number of times before the so-called closure orders have been exercised. There has been some presentation of that. Closure order is a better way of bringing about the compliance rather than the penalty, and, they said, look at all the closure orders that have been exercised under the Metallic Act.

The GAO had a report on closure orders last year, I think, indicating that of the closure orders exercised something like 5 percent of them resulted in a shutdown of the mine itself. In the neighborhood of 43 percent resulted merely in the issuance of what we call "red tag" for machinery, equipment or failure to wear certain kinds of protective equipment.

And, as a matter of fact, 69 percent of them were lifted within 1 week after they were exercised. The point I mention here, Mr. Chairman——

The CHAIRMAN. So many closure orders went to part of the operation?

Mr. SHEEHAN. Only to part of it. Only 5 percent were really shut down. Most of them were "red tagged" machinery and equipment, or because of failure to use protective equipment, and most of them were lifted, almost—69 percent were abated within 1 week after being issued. That indicates to me that the closure order which was placed on the mines was with regard to a situation which probably should have been abated a long, long time ago, and is something that could be abated almost immediately, because 69 percent of these abatement orders, which probably were in the area of just "red tagging" some machinery and equipment, could have been cleaned up earlier.

Our testimony, as Mr. McBride is indicating, is that, aside from using the closure order which is not really a penalty, we don't consider closure order strictly as penalties. We consider the closure order for the purpose of removing the miner from risk. That is not a penalty. That is a precaution. The civil penalty is the one where we get into the penalty system.

Under the Federal Metallic Act the inspector can only come in with the heavy stick, which is the closure, and we can see where he didn't use it too heavily anyhow, rather than having this alternate method.

One other thing I think ought to be brought into play here is our experience with the OSHA Act.

The CHAIRMAN. That was going to be my next question to you. I am going to be particularly interested in this because this has been a problem area, you know.

Mr. SHEEHAN. Let me try to say it this way in terms of the focus from the mining legislation. We have learned under OSHA that where there were discretionary and mandatory penalties and an OSHA inspector leveled a citation, most of the citations—98 percent your committee found out 1 year—were for so-called nonserious violations. In other words, this is an area where discretionary penalties could have been exercised.

Some of us suspect that the reason there were that many nonserious citations was the reluctance to impose the penalty. So they came out with a citation in which the imposition was purely discretionary. Second, in exercising the discretion to impose the penalty, they did so only in 30 percent of the cases.

So, here, the penalty structure which was for the purpose of inducing compliance turned out not to be an inducer at all because it was relatively unused under OSHA in the area where they did have the right to use discretionary penalties.

Another comment should be made about the OSHA situation, and I think it is part of the problems in the Congress with regard to the unbelievable opposition to OSHA. It is that many of the standards in OSHA are standards that were picked up from ANSI and they were imposed upon industry. The standards here are tailor-made. They are standards that apply only to the mining industry. There are very few of them and they apply directly to a particular situation and it is not unreasonable, therefore, to have a penalty situation unlike the OSHA experience where there are a lot of standards applying across the board to everybody.

The CHAIRMAN. The major complaint that we heard under OSHA were that the penalties were nit-picky little annoying things and had no effect other than to annoy the penalized. It had no changing effect. It was no deterrent nor had a positive effect.

Mr. SHEEHAN. I know that argument.

The CHAIRMAN. You said something that was not quite in line with what we felt here. You said that is was just loaded with inconsequential penalties in terms of amount and in terms of effect, and that its only effect was total frustration and annoyance. This leads to amendments.

Mr. SHEEHAN. On the Hill?

The CHAIRMAN. Yes.

Mr. SHEEHAN. The reason for the inconsequential and annoyance penalties is that the standard being inspected against was itself an inconsequential, vague or irrelevant because the Congress told OSHA to pick up all those ANSI standards and dump them into the Federal Register and make them all mandatory. Many of these standards were inconsequential. It is to the shame of OSHA that they didn't, in the past administration, get about the job of eliminating those irrelevant standards.

The contrast we want to make here is that if you penalize against vague and inconsequential standards you end up with harrassment type penalties. Here we have a limited amount of standards specifically designed for the mining industry. They are not irrelevant. They are not vague and they are not numerous. They are precise, limited and easily identifiable. Mandatory penalties within the framework are certainly more reasonable than having the shutdown order occur, which is the big step.

The CHAIRMAN. Excellent. Thank you.

Senator Schweiker?

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

I would like to ask either Mr. McBride or Mr. Sheehan, whoever may have the figures, what statistics or incidence of fatalities or accident frequencies can you cite to justify the fact that we should include

metal and nonmetallic mines under the program that the coal mines have been under? Do you have any figures that might be helpful here?

Mr. McBride. There are some very dramatic examples of the need for the kind of legislation we are asking for. The Sunshine mining disaster, I think, stands out. While I am not in a position to quote in detail the statistics, the overall statistics that are available for the industry indicates, I think, 222 deaths, with something in the neighborhood of 18,000-plus lost time accidents.

That alone should be ample reason to put into meaningful form administrative enforcement and administrative establishment of proper standards. We have heard Jack, who has made a very detailed study of some of these things. Perhaps he can give you greater information on those statistics.

Mr. Sheehan. Senator Schweiker, I think these statistics, incidentally, are rather dramatic with regard to underground operations in both coal, and in metallic and nonmetallic mining.

In 1966, the frequency rate of fatalities in the coal mines was 1.12. In the same year, in the underground metallic and nonmetallic mines, they were lower than in the coal, 0.95. We picked 1966 because that is the year of the passage of the Metallic and Nonmetallic Mine Safety Act. Then, after 1969, when the amendments to the Coal Health and Safety Act became law, we see a very pronounced decline in the frequency rate in the coal mines.

As a matter of fact, that year, 1969, it was 0.95 for the coal mines. The frequency rate for metal mines was still under that figure at 0.87. But then, beginning in 1972—and I would assume the impact of the Coal Mine Safety Act was taking effect from 1972 to 1975—there was a dramatic decline in the frequency rate in the coal mines, so that in 1975 it was 0.48, whereas, in the metallic and nonmetallic mines it was 0.58.

In other words, during those last 4 years the frequency rate in the metallic mines was higher than the frequency rate in the coal mines.

Senator Schweiker. I wonder if this is a valid analysis. I was looking at a computer print out. It just dramatically shifted between 1971 and 1972. Up until 1971, the most dangerous place to work was in an underground coal mine in terms of fatalities per man hours.

Then, in 1972, it just completely shifted. Now, the most dangerous place to work is an underground metallic or nonmetallic mine, and that has been consistently true for 1972, 1973, 1974, 1975, and 1976. So, since 1972 we have been making some progress in the coal mines. I have seen some dramatic shifts there.

By the same token, we see very little progress in the metallic and nonmetallic mines. As a matter of fact, for the years 1972, 1973, and 1974 the metallic and nonmetallic mines actually had a higher total number of people killed than the coal mines did. So, tragically, they have taken over from the coal mines in that regard. I think that is pretty convincing evidence of the effect of one statute versus the effect of the other statute.

It is also true, I might say, in the other comparisons, but I think this is probably the most dramatic portrayal.

That is all I have, Mr. Chairman. Thank you.

Mr. McBride. If I might add one thing, I should like to relate a personal experience I had late last year. I happened to be caught in a

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hotel fire, and the hotel was being evacuated. On my floor I encountered a fireman who was in the process of getting us out so I had an opportunity to talk to him.

In the paper at that time there was an accounting of the number of deaths among firefighters. I was particularly alerted to the fact that it is an unusually hazardous occupation. Under the circumstances of all that smoke, I became quite familiar with this type of hazard.

He related to me that he had made a study and there was only one other occupation that compared to the degree of hazard and frequency of fatal injuries and serious injuries to the firefighting occupation, and that was underground mining.

It seems to me, statistically, a good case can be made for beefing up the safety regulations and the administration of safe mining laws.

Senator SCHWEIKER. There is a trend I noticed here, too. While in 1972, 1973, and 1974, the actual number of fatalities was higher in metallic and nonmetallic areas than the coal mine areas, it would have been higher in 1975 and 1976 if they had mined as much product because what has happened here is the coal mining man-hours have picked up and metallic and nonmetallic have not, so now nonmetallic man-hours are only about a quarter of what your coal mining man-hours are.

If we were mining as much metallics and nonmetallics as we are coal the death rate would be horrendously high. But just because we are only mining about a quarter as much time the total number of fatalities aren't as bad, but the incidences are significantly higher in the last 5 years.

That is all I have, Mr. Chairman.

The CHAIRMAN. Thank you very much. Is there anything else?

Mr. MCKEE. Mr. Chairman, my name is Frank McKee. I am presently director of the 10 Western States. We have a geat deal of mining in that area, both underground and open pit. We mine most everything.

As you well know, I testified before either a House committee or your committee in 1975 and 1976 and, now, again in 1977. I certainly don't want to belabor this hearing, but there is something I would like to point out to you specifically in regard to the transfer from the Department of the Interior to the Department of Labor the enforcement segment of this act, which, of course, is MESA.

I picked up the Los Angeles Times coming in on the airplane Sunday night. It was dated March 27, 1977. There is an article captioned "Oil Mining Firms Control Interior Department Andrus Says." Of course, that is former Governor Andrus of Idaho, who now is the Secretary of Interior, and I can't agree with him more. They certainly do control the Department of the Interior.

And he goes on, in the article, saying a lot of things about revision. The mining firms are no longer going to control the Interior Department. I certainly have to applaud many things that Andrus was able to accomplish as Governor of Idaho. But, throughout this entire article he mentions nothing about any reform or any consideration as far as mine safety is concerned. He is concerned about the primary function of the Department of the Interior, which, of course, is the development of natural resources. I have to agree with him. This is true.

The mine safety enforcement, we feel very strongly, Mr. Chairman, should be placed in the hands of the department that is sensitive

toward the worker. We feel more comfortable with the enforcement, the administration of the enforcement, in the Department of Labor.

Over the years, and I have been involved in mining in some way since 1960, and as director of district 38 involved in dealing with large companies such as Kennecott Copper, A.S. & R., Heckler and many others. I have found they resist this change. We just can't get any input into the Department of the Interior although we have been crying bloody murder and, actually, in some cases it was bloody murder. We need MESA in a department that will look to our needs. All the credibility of the Interior Department has been divorced from the thinking of the people who actually work in the mines and the officials of our union in particular. I am sure that the coal miners and the United Mine Workers join us in this thought.

As I said, I don't want to belabor this point but I have to agree with Secretary Andrus, there is no question about the Department of the Interior being controlled by the oil and mining companies. He recognizes this situation. This is well and good, but he doesn't recognize the fact—never made mention of the fact—that there is a problem as far as mine enforcement is concerned; the mine safety enforcement—no mention of that.

My concern is for the workers who have to go down into the ground and dig out the necessary ore to supply the energy to this country.

Mr. Chairman, I just wanted to make a few remarks in support of this bill, your bill, that will take MESA out of the Department of the Interior, and if it is controlled by the oil and mining firms after that time, I really don't care since they won't control the enforcement of safety.

The CHAIRMAN. Thank you very much, Mr. McKee. If we can have that to copy it, you can have that back.

Mr. MCKEE. I won't need it back.

Mr. MCBRIDE. Thank you very much.

[The prepared statement of Mr. McBride follows:]

UNITED STEELWORKERS OF AMERICA
SUPPORTS MAJOR
MINE SAFETY AND HEALTH LEGISLATION

March 30, 1977

Lloyd McBride, President-elect of the 1.4 million-member Steelworkers union, called for major new legislation to protect the nation's miners today.

In testimony before the Senate Subcommittee on Labor today, McBride called it a disgrace that 222 miners were killed last year. He indicated full support of the United Steelworkers of America, which is the major union for noncoal miners, for S-717, which has been introduced by Senator Harrison Williams and twenty-five other Senators.

McBride said that "noncoal miners are inferior citizens right now in the eyes of the law. The Metal and Nonmetallic Mine Safety Act that covers them is far weaker and less effective than either the Coal Mine Safety and Health Act or OSHA. The weakness of that law, plus the fact that its implementation is burdened by the Department of Interior's conflict of mission, means that the hard rock miners have two strikes against them."

The Williams bill would:

(1) upgrade the statutory protection for noncoal miners so that their protection is comparable to the protection for coal miners and general industry workers;

(2) combine the two mine safety laws into one mine safety statute, and

(3) transfer implementation of the mine safety and health program from the Department of Interior to the Department of Labor.

"Metal miners," McBride told the committee, "have been on the short end of the stick. The first Coal Mine Safety Act was

passed in 1941, but it wasn't until twenty-five years later that a Metal Safety Act was enacted by Congress. We are now eight years later trying to catch up to the revised and more appropriate provisions of the 1969 Coal Mine Safety and Health Act."

Calling it a matter of urgency, the new Steelworkers' leader urged quick congressional action on the bill to provide a regulatory framework which is adequate for all miners.

McBride will succeed retiring Steelworkers' President I.W. Abel in June

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STATEMENT

of

LLOYD McBRIDE, PRESIDENT-ELECT

UNITED STEELWORKERS OF AMERICA

on

THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977 (S-717)

before the

SUBCOMMITTEE ON LABOR
COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

March 30, 1977

Mr. Chairman, my name is Lloyd McBride. I am President-elect of the United Steelworkers of America. Our union is a major mining union in that it represents over 100,000 miners in iron ore, nonferrous and quarry mines. In reality, we are a natural resources union representing workers engaged in all phases of metalmaking. It is on behalf of our members in the metal and nonmetallic mining sector that I appear here today.

The United Steelworkers of America fully supports S-717, the Federal Mine Safety and Health Act Amendments of 1977, and we consider its enactment to be one of the Steelworkers' very top legislative priorities. The 95th Congress is the third consecutive Congress before which we have come to urge passage of similar legislation. We have waited patiently, Mr. Chairman, but the miners of this country should not have to wait any longer for adequate safety and health protection.

Metal miners have, indeed, been on the short end of the stick. The first coal mine safety act was passed in 1941, but it wasn't until twenty-five years later that a metal safety act was enacted by Congress. We are now eight years later trying to catch up to the revised and more appropriate provisions of the 1969 Coal Mine Safety and Health Act.

The absence of equal statutory protection for hard rock miners is not because of an absence of need. NIOSH officials have

testified that:

> "Metal miners extract about 50 commodities including copper, mercury, gold, silver, lead, zinc, uranium, and asbestos. These miners are exposed to perhaps an additional 50 potentially toxic substances and harmful physical agents during mining processes. Adequate information does not exist on the levels at which most of these substances are present in mines. As a group, workers in metal mines and mills are also exposed to an even wider range of pneumoconioses-producing dusts than are coal miners. They are also exposed to a number of carcinogens, including asbestos, arsenic, uranium, and beryllium."

For the metal miners, enactment of this legislation constitutes a matter of urgency. The fact that this Subcommittee, as well as its counterpart in the Senate, has acted so rapidly in initiating action on the legislation so early in the 95th Congress demonstrates a recognition of that urgency. We do wish to express our appreciation for this early start.

Mining is extremely dangerous work. The death rate for miners is higher than the death rate for any other group of workers. The latest listing published by the National Safety Council shows that miners are killed at a rate which is more than four-times higher than the national average for occupational deaths. In light of this, it is incredible that the hard rock miners remain covered by the weakest of all major Federal worker safety and health statutes. Every day that the Metal and Nonmetallic Mine Safety Act remains unchanged, hard rock miners remain inferior to their colleagues in the coal mines and to their colleagues in general industry. As we learned in 1972, inferiority is synonymous with jeopardy. Ninety-one miners -- members of our union -- died that year at the Sunshine Mine in Idaho.

Ever since that disaster, we have redoubled our efforts to accomplish three major objectives: (1) upgrade the statutory protection for hard rock miners so that their protection is comparable to the protection for coal miners and general industry workers; (2) unify mine safety laws into a single statute, and (3) transfer implementation of the mine safety program from the Department of Interior to the Department of Labor. S-717 achieves all three of these objectives.

UPGRADING METAL AND NONMETALLIC MINE SAFETY LAW

There should be no debate as to the need for upgrading the 1966 Metal Act. Since its enactment eleven years ago we have learned a great deal about what needs to be in a workplace safety and health law to make it effective. Compared to the Coal Mine Act and OSHA, there are a great number of basic rights and procedures lacking in the 1966 law.

1. Rule-making

The current law is characterized by a laborious -- in fact, sometimes interminable -- standard-making procedure. It is typical that several years pass between the time the standards advisory committee recommends a standard and MESA takes any final action. In the case of the Sunshine Mine disaster, twenty-two months passed after the fire before MESA promulgated a standard requiring miners to be provided with self-rescuers, despite the unmistakable and immediate need that was shown for such a standard by the disaster. It is not unusual, in fact, that final action never comes on proposed standards, and the 1966 Act provides no time limits on the procedure to prevent this.

S-717 corrects this by establishing a far more efficient standard-making procedure which, once begun by the Secretary, triggers automatic deadlines for certain procedural steps leading to final promulgation. The bill also makes available to the Secretary an expedited procedure for putting temporary emergency standards into immediate effect should extraordinary circumstances arise.

2. Inspections

The current Metal and Nonmetallic Act is built around many other structural weaknesses. In the enforcement area, for instance, inspections of underground mines are required only once a year, as opposed to four times a year in the Coal Mine Safety Act. MESA has now undertaken an administrative policy -- partly in response to the pressure of legislation similar to this in the previous Congress -- of conducting four inspections a year in all underground mines. No slippage should be allowed from this level which is already achieved for all underground mines by a combination of statutory and administrative action. It should be a permanent statutory requirement that all underground mines be inspected at least four times a year. S-717 requires that number of inspections for all mines.

Frequent inspections can be a benefit for the mine operators as well as for the miners themselves. I understand that some of the operator representatives testified before the House committee recently to the effect that they were pleased with the frequent

MESA inspections because of their educational and consultative value. Essentially, through frequent inspections, the operators are able to learn better what is required of them and to catch violations at an early stage before drastic enforcement remedies are needed. Enlightened self-interest, then, should bring support for the four-inspections-a-year requirement from the operators.

3. Civil Penalties

Another example of the weak enforcement authority in the current law is the fact that MESA has no authority to issue civil administrative penalties. In fact, the only administrative enforcement tools under the existing scheme are closure orders for imminent-danger situations and for the operator's failure to abate a violation within the required time. S-717 corrects this deficiency by two means. It requires civil penalties for all violations and provides for additional use of closure orders for special circumstances.

The imposition of mandatory civil penalties is an extremely important feature for achieving flexible and effective enforcement. A closure order is sometimes too drastic a remedy, and, by itself, does not constitute an adequate enforcement arsenal. The penalty procedure is needed as the main enforcement tool, leaving closure orders to especially serious situations which must be corrected immediately. Basically, closure orders are designed to correct dangerous conditions which cannot be allowed further extended

abatement periods. In that sense, they should not be considered as being a form of penalty so much as being a form of immediate relief. It also should be noted that a recent GAO survey of closure orders issued under the Metal Safety Act indicated that only five per cent of the orders actually closed an entire mine. A majority of them involved withdrawal of unsafe equipment and personal protective devices. However, industry representatives seem to think that the closure is a sufficient penalty and are objecting to the proposed mandatory administrative penalties -- which they declare to be punitive.

Actually, the civil penalties should be considered more as a preventative device than a punitive one. The penalties are designed to induce compliance and prevent violation by adopting the same mandatory penalty formula as in the Coal Mine Safety and Health Act. Last year's House-passed bill provided for discretionary penalties in the metal and nonmetallic program. However, with mandatory penalties, as in S-717, the inducement to compliance is more pressing and the operator will be less inclined to take the chance of not being penalized. The mandatory penalty provides a greater degree of predictability of enforcement reaction if there is a violation.

The standards to which the mine operators must adhere were developed after the gravity of the hazardous situations were recognized and after a very lengthy rule-making procedure in which the mine operators were involved. The standards have

a very particularized application. They are, indeed, vertical standards in that they are categorized into ones which apply to underground, open pit, and sand/gravel mines respectively. The imposition of a penalty for the violation of such a specifically designed standard is not, therefore, arbitrary and unreasonable.

It also should be pointed out that the $10,000 penalty provided in the bill refers to the maximum that can be assessed for a violation. Penalties approaching that amount would be used only in the most severe situations. The legislation, in fact, lists several factors to be considered in moderating the size of the penalty. These considerations are the gravity of the violation, the operator's previous record, the operator's good faith efforts for compliance, and the size of the mining operation. In other words, there are numerous avenues for mitigating the penalty. And, of course, due process remedies are available to the operator if they wish to appeal the penalties.

4. Closure Orders

Use of this penalty system would leave the closure order remedies as an additional tool for more hazardous situations from which the miners should be removed. S-717 would continue the four closure orders currently contained in the Coal Mine Act -- (1) imminent danger, (2) failure to abate, (3) technological inability, and (4) unwarrantable failure to comply.

Closure in these situations enables the Secretary to remove miners from hazards until the risk has been removed. These are situations which are just as grievous to metal miners as similar conditions would be in coal mines. Hence, it is most equitable that the proposed bill extends the same closure powers to cover metal mines. The concept of closure has already been applied in the Metal Act. S-717 merely identifies additional situations in which removal of the miners is necessary to protect them.

Since the passage of the 1969 Coal Mine Act, gaps in the closure powers were discovered. The above-mentioned four closure authorities are administratively imposed and, hence, are narrowly drawn. In order to handle other situations, such as the Scotia mine disaster, the bill adds two new closure orders. These shutdowns can occur, however, only by a judicial action:

1. A civil penalty closure can be ordered by the Review Commission where, through gross negligence and willful noncompliance, a violation of a standard results in imminent danger to the miners.

2. An injunctive closure can be ordered by the U.S. District Court where "the operator of a mine engages in a pattern of violations of the health and safety standards of this Act, which in the judgment of the Secretary, constitutes a continuing hazard to the health and safety of miners."

These new remedies are meant to provide an effective means of dealing with the most obstinate of situations or operators, and would be used only on rare occasions.

The proposed bill, therefore, provides a flexibility of enforcement tools through fines to induce compliance and closure

orders to remove miners from risk. The tools are applicable to both coal and noncoal mines because the specifically defined situations could occur in either category of mines.

5. Worker Rights

Besides deficiencies in standard-making and enforcement procedures, the 1966 law lacks vital worker rights such as the walkaround on inspections, and the right to make anonymous requests for special inspections. These basic rights are provided for in S-717. In the bill other important rights are extended also to the hard rock miners in terms of wage protection. These include wage continuance during the walkaround and during closure orders, and wage rate retention when a miner is transferred to another job as a result of medical surveillance.

As workers, we are becoming more acutely aware of the health hazards to which we are being exposed, and we are becoming more aware that the health damage can be prevented. The use of the medical examination is a preventative program whereby workers not yet diseased can be removed from the injurious environment. However, workers do resist the medical examination because they fear job loss or wage loss. The bill provides that there can be job transfer and rate retention where, as the result of a public rule-making procedure, a health standard promulgates such a provision. This provision should not be confused with workers' compensation cases where the worker has been certified as disabled and has been discharged from the job. The proposed bill addresses itself only to the situation where a worker can be saved from becoming disabled by removing him from continued exposure. In so

doing, the worker should not have to pay a financial penalty as a result of the transfer. This concept is already in the Coal Mine Safety Act and is being extended to metal miners who are subject to a greater variety of toxic insults than are coal miners.

6. Health Protection

Even the title of the current metal and nonmetal law gives an indication of another face of its deficiency -- it does not refer to occupational health, as do the other workplace protection laws. The Coal Mine Safety Act and OSHA are linked statutorily with NIOSH to help assure the development of adequate health protection for the workers covered by those two other laws. The Metal Act, however, has no such linkage. Yet, hard rock miners face very serious health hazards that beg for effective regulatory action. In testimony last year, John Finklea, director of NIOSH, stated that his agency "has developed recommended standards for some of the most important health hazards facing workers in metal and nonmetal mines, including noise, asbestos, silica, beryllium, inorganic arsenic, inorganic mercury, carbon monoxide and nitrogen oxides." This work by NIOSH, though, has no statutory bridge to the metal and nonmetallic mine safety program. S-717 establishes that critical link with NIOSH and embarks MESA on a health as well as a safety course for hard rock miners.

Having said this, though, I must hasten to add a degree of historical perspective to my comments. The fact that we are today requesting a major overhaul of the Metal and Nonmetallic Mine Safety Act does not mean that we have been totally critical of the past action of Congress. As a matter of fact, we were

the main supporters of the existing metal and nonmetal law during its development. But much has changed since 1966 when it was enacted. We have witnessed a pronounced awareness of environmental and occupational health and developed more precise statutory tools to cope with the environmental and occupational hazards. We cannot, therefore, allow ourselves to be locked into the best effort of the past by failing to revise the current safety acts.

In short, S-717 establishes the improvements needed in the areas of standard-making, enforcement, worker rights and health protection in the metal and nonmetallic program.

SINGLE MINE SAFETY AND HEALTH LAW

The Steelworkers has consistently sought to unify the coverage of all miners under one mine safety and health law. We are most pleased that bills before both the House and Senate committees propose a one-law approach. There is absolutely no reason why miners in one segment of the mining industry should be given different statutory rights than miners in another segment of the industry.

Industry opposition to a single law has always been voiced in terms of the need for flexibility due to differences in coal and noncoal mining. However, to the extent that there really is the need for such flexibility, it applies only to the specific occupational safety and health standards. But there is no need for variation in the actual procedure for developing standards, nor in the enforcement methods, nor in the worker rights. Those procedures and those rights can be, and should be applied uniformly throughout the mining industry.

The standards themselves do vary according to applicability and need among the different mining sectors. Even now, separate vertical standards are applied to the different types of mining covered by the single Metal and Nonmetallic Act (i.e., underground, surface, and sand and gravel). It is important to emphasize that S-717 does not legislate standards, nor would it cause coal standards to be applied to noncoal mines -- or vice versa. The bill would, however, establish uniform procedures for developing those standards and for enforcing them, and that is exactly as it should be in order to provide all miners equal protection under the law.

TRANSFER OF JURISDICTION TO LABOR DEPARTMENT

The third major element of the bill is the transfer of MESA from the Department of Interior to the Department of Labor. This move is crucial for the long-range effectiveness of the mine safety and health effort. Without the transfer, MESA cannot consistently received the priority attention from its parent organization that is necessary to aggressively regulate the mining industry on behalf of the workers in that industry.

There are three major points to be made in support of transfer.

1. Conflict of Mission

The first, to which I have just alluded, is the fact that the Interior Department suffers from an inherent conflict of mission. Not only is the Department responsible for MESA's regulation of

extractive industries, but it is responsible also for the development of the extraction itself. Those two responsibilities obviously conflict with one another, and one effort must suffer for the sake of the other in terms of departmental priority and emphasis.

We know that historically it has been the safety effort which has done the suffering, and we see no reason why that pattern would not continue to be the case over the long-run in the future. This is particularly true when one considers the pressures which are beginning now -- and which are sure to continue into the foreseeable future -- for accelerated domestic energy and minerals development.

The Interior Department has a number of missions which might either conflict with or compete with worker-safety responsibility. We are convinced that there is an inherent conflict between production promotion and safety development. We are all aware that such a conflict exists in industry itself, and, hence, we have a regulatory intervention in the production cycle. It would be unreasonable to ignore the potential for the same conflict where one government agency is both a promoter and a regulator. Only three years ago Interior acknowledged this problem when it was forced to remove MESA from the Bureau of Mines, although it left the function under the same Assistant Secretary. Now, support has developed to put MESA under its own Assistant Secretary because of the conflict of mission problem. However, it would remain in the same Department in which the conflict and competition exists.

By transferring to the Department of Labor, we have neither the conflict nor the competition because that is an agency whose primary function is workers' welfare.

The conflict of mission can be resolved only by removing the regulatory program from the Interior Department entirely. Certainly if the mine safety and health program were being enacted for the first time now, it would be placed automatically in the Labor Department in recognition of that department's main role of enhancing workers' interests. We should not hesitate now in righting a past error in jurisdictional placement, especially since the error has resulted in obvious harm to the program.

Even if there were some way to insulate MESA from the burden of Interior's conflicting role, it would be impossible to remove from the eyes of the miners the credibility gap which had developed because of MESA' identification with the Interior Department in the past. The miners' confidence in the safety program can be gained only when MESA is removed from the Department.

2. Safety and Health Professionalism

While the first point has to do with why MESA should be removed from Interior, the second has to do with why it should be placed in the Department of Labor. The obvious point is that, as already mentioned, Labor is the agency responsible for workers' interest. But in addition, the transfer to Labor is consistent with the efforts to house safety and health professionalism in one agency so that the professionalism can be better used. With

the evolution of OSHA, the Labor Department has obviously become the focal point for the government's safety and health attentions. MESA should be in the Department of Labor so that it can benefit from these attentions.

This does not mean, of course, that MESA will be absorbed by OSHA. S-717 prohibits that from happening by establishing within the Department a separate Assistant Secretary for MESA on equal standing with the Assistant Secretary for OSHA.

3. Jurisdictional Overlap

Third, transfer is needed to resolve current problems of jurisdictional overlap. Those problems exist from an administrative point of view in that two cabinet level departments, Interior and Labor, are sometimes vying for jurisdiction over the same ground. Milling operations, in particular, have been subjected to a tug of war between OSHA and MESA. Transferring MESA to the Department of Labor will allow the administrative problems to be resolved expeditiously by giving one cabinet officer the responsibility of defining the jurisdictional lines.

The current jurisdictional overlap causes not only an administrative problem for government, but it also creates confusion and problems for industry and labor. Some companies are now covered by three separate safety and health laws and two government agencies. S-717 would greatly improve that situation by reducing the coverage to two laws and one agency. It is because of the simplification and uniformity that such a change promises that some companies involved with the full range of

mining, milling, and general production have publicly supported transfer of MESA to the Department of Labor

CONCLUSION

Last year 222 miners died and 18,442 miners suffered disabling injuries. That is a disgrace and should not be allowed to continue. We may finally be experiencing a slight downward trend in fatalities and injuries, but that certainly is no reason to consider the urgency for this legislation to be lessened. Only by improving the mine safety law and by relocating its implementation in the proper agency can we expect to see a continued and greatly accelerated drop in the deaths and disablements of miners.

Hard rock miners are inferior citizens right now in the eyes of the law. The Metal and Nonmetallic Mine Safety Act that covers them is far weaker and less effective than either the Coal Mine Safety and Health Act or OSHA. The weakness of that law, plus the fact that its implementation is burdened by the Department of Interior's conflict of mission means that the hard rock miners have two strikes against them.

We hope that the committee can quickly move the bill and provide for a regulatory framework which is adequate for protecting all miners and which is implemented by the Department of Labor.

Mr. Chairman, I thank you.

The CHAIRMAN. The United Mine Workers of America are the next witnesses. I know Mr. Arnold Miller, President, is not able to be here today. I understand his statement will be presented by Mr. Steven Jacobson.

Mr. Jacobson, if you will introduce your colleague at the table we will proceed.

STATEMENT OF STEVEN JACOBSON, COUNSEL, MINE HEALTH AND SAFETY, UNITED MINE WORKERS, AND LORIN E. KERR, M.D., M.S.P.H., DIRECTOR, DEPARTMENT OF OCCUPATIONAL HEALTH, UNITED MINE WORKERS

Mr. JACOBSON. Mr. Chairman, and members of the subcommittee, my name is Steven Jacobson. I am primary counsel for the United Mine Workers of America on mine health and safety matters. With me is Dr. Lorin Kerr, who is head of the UMWA's Department of Occupational Health. We are both substituting today for UMWA President Arnold Miller, who had planned on being here himself until the last minute.

Mr. Miller very much wanted to be here today but was unfortunately called away by the sudden death of Mr. Nick DeVince, who was serving both as head of the UMWA Safety Division and as a member of the UMWA International Executive Board representing southwestern Pennsylvania.

Mr. DeVince was stricken with a fatal heart attack over the weekend and Mr. Miller is attending his funeral in Uniontown, Pa.

The United Mine Workers of America is a labor organization representing over 140,000 working coal miners. Last March, Mr. Miller appeared before this subcommittee and presented the UMWA's views on the issue of mine health and safety. It is unfortunate that the mine health and safety legislation could not be passed in the remaining hours of the 94th Congress for it was and is urgently needed.

Because of this urgent need we are appearing before this subcommittee today to voice the UMWA support for S. 717 and to underscore our belief that it makes major improvements over the 1969 Coal Mine Health and Safety Act.

In addition, we have some areas to which we would address comments which we are directing toward recognized inadequacies of the 1969 law based upon our 7 years of expertise in working with the act.

I do not intend to go in detail over each of these suggestions. I will touch on a few of them, all of which are in the prepared testimony which has been submitted for the record.

Historically, we are all aware of the Farmington disaster of November 20, 1968, that killed 78 coal miners that led to the enactment of the 1969 act. We are easily reminded of the Buffalo Creek, the Scotia disaster and the Kocher Tunnel disaster of just last month.

All the violations and lack of enforcement of the 1969 act are now committed to record. Each of these enumerated disasters was terrible but has at least served toward directing the search for a legislative vehicle which would help prevent such disasters in the future.

Reports from MESA and the Bureau of Mines show that since the inception of the 1969 act through December 1976, 1,383 coal miners were killed and 91,736 suffered disabling injuries. There have been

many thoughts and many reasons why there has been this sacrifice and maiming but there are no thoughts and reasons to justify it.

Mr. Chairman, this committee recently conducted an extensive investigation into the Scotia disaster, which once again, brought to the public's attention and our own the dangers of coal mining. As one coal miner put it, "There is no way you can really promote mine safety without working on it fulltime." The chairman, the subcommittee, all the cosponsors of this bill are to be commended for their continuing concern for mine health and safety.

Your subcommittee, the UMWA and other concerned individuals and organizations have worked over a period of several years to come up with legislation that would serve to correct the mistakes of the past. S. 717 represents these efforts and the UMWA offers its strong support to this legislation.

At the UMWA's 47th Constitutional Convention in September 1976, the entire rank and file delegation voted unanimously to adopt a resolution providing for the transfer of MESA from the Department of Interior to the Department of Labor. Thus, the UMWA offers its support to the transfer provisions of this legislation.

Briefly stated, S. 717 does three things. It transfers the responsibility for enforcing the Nation's hard and soft rock mining laws from the Interior Department to the Labor Department. The rationale behind the transfer continues to be that responsibility for enforcement of the Federal mine safety laws should not rest within the same department responsible for mineral production.

Second, this legislation will significantly upgrade the 1966 Metal and Nonmetallic Mine Safety Act, an action that is long overdue, which Mr. McBride's testimony made quite clear. For too long, the Nation's hard rock miners have worked under safety laws that are dangerously inadequate.

Third, it also upgrades a number of provisions of the 1969 act.

The UMWA is pleased to be able to appear before you today on S. 717, the Federal Mine Safety and Health Amendments Act of 1977. In further cooperation with you, Mr. Chairman and the subcommittee, we would like to take this opportunity to offer some suggestions for the purpose of clarification and review relative to the pending legislation.

As I pointed out before, all of our recommendations are set out. I would just like to touch on several of them briefly.

First of all, we believe the preamble of the bill should be expanded to include language indicating that the act not only protects miners but also those affected by mining activity. For example, those who live in the shadow of waste impoundments.

Second, we would suggest that the language in the definition of a coal mine be very slightly altered to make it clear, as in the 1969 act, the UMWA construction workers who are engaged in the construction of preparation plants are included within coverage of the act. We are aware that the Association of Bituminous Contractors is contending that the construction work should not be covered by this act at all but rather, by other legislation.

ABC has contended that the work is different from that performed by coal miners. This is true in part but only to the extent that coal mine construction work has actually been shown to be more dangerous

than underground coal mining with a higher fatality rate and a higher injury rate. It is not true to the extent that the operations performed are that different.

The contractors tried to present evidence to that effect in the form of their choosing to the U.S. Court of Appeals for the Fourth Circuit who ruled to the contrary just this last January finding that the operations were indeed similar, noting in particular that the construction employees are exposed to explosions from methane gas just as coal miners are.

We would suggest a slight amendment to the variance procedure to insure, first of all, that there is a procedure for where variances are granted, and which sets aside variances that are subsequently proved to be unsafe. This is in the 1969 act but it is not all that clear in the 1969 act and we think it should be made clear.

We would also suggest that the restrictions on variances be tightened to insure that the protection of the miners is insured at all times.

With respect to the provision of section 104(f) dealing with request of inspection by miners, we think the current language includes many improvements but we are concerned that there are some parts that might be construed as not being improvements; therefore, we would prefer sort of an amalgam of the language of this section and of the 1969 act.

The unwarrantable failure provisions have been a subject of repeated litigation which has largely resolved most questions, but the question of what unwarrantable failure itself means is still unclear. We believe that the legislative history of the 1969 act makes it quite clear that unwarrantable failure is simple negligence and we would hope the act could be amended to say exactly that.

In the discrimination provisions we think it should be made specifically clear that a miner who is discharged can be granted temporary reinstatement while his case is pending if he shows reasonable grounds that he will ultimately be reinstated. We had a recent case of one miner who, although he was eventually ordered reinstated, was out of work for some 2 years while his case was pending before the Interior Department.

The whole purpose of the discrimination provisions is to encourage reporting of safety violations by protecting the miners. We believe the whole purpose is vitiated when someone is out of work for 2 years even though he is ultimately reinstated. Two years out of work is a powerful incentive not to report safety violations.

The 1969 act included a number of very important provisions restricting the availability of temporary relief from actions of MESA. We would hope that those provisions could be retained intact in this act.

Finally, we would recommend that the Labor Department's Solicitor's Office be given the duty and authority to proceed with collections of civil penalties not only in the Federal courts of appeals but also in the Federal district courts. We have suggested a provision to that effect.

I have nothing further that I wish to present on the safety provisions. Dr. Kerr has testimony covering the health provisions of the act.

The CHAIRMAN. Thank you very much, Mr. Jacobson. While we have him here we are not going to let him sit silently. Doctor, enlighten us. You have been doing this—I was going to say for decades, but for one good decade at least. What is good about this bill? What is wrong about this bill? What should we be doing that we are not doing and what are we doing too much of? Give us the whole picture.

Dr. KERR. Mr. Chairman, I couldn't do that in the time we have.

The CHAIRMAN. You mean, tell us what we are doing right?

Dr. KERR. I think that would be a great job because I am such a firm admirer of the Coal Mine Act and, as I have told you and I've told many others, I think it was an historic piece of legislation. It was the first time Congress ever reached into a major industry and said the disease in that industry has got to be wiped out, and you set up the dust standards, when they should be achieved. You complemented it with an X-ray program of the working miners. You also dipped into noise and some of the other health problems we have.

And I feel very firmly that the Coal Mine Act is the best occupational health legislation that has ever come down the pike in Congress.

The CHAIRMAN. I appreciate your saying that. It is a different situation though than we have in industry generally, we all know. We were specific in so many of our standards in safety and health. We could be with one industry where many of the problems could be quite clearly seen and dealt with, like the dust standard.

We have not had the same legislative opportunity in industry broadly. Therefore, it has to be done through administrative action and regulation. But that coal mine bill was unique in a way in that basic standards were a part of the legislation.

Dr. KERR. Yes, you are right, you were addressing a single industry. But also, it has permitted us in this industry, with the occupational health programs and the safety programs, we have been able to set up some precedents which I think need to be looked at as far as other industries are concerned. We hope these will be helpful in other industries.

They are not all totally resolved but some of them are getting there. You have provided the machinery that has made it possible to attack these problems in a head on manner and develop a method by which we can begin to, I think, assure ourselves that we are eventually going to have control of these health problems.

As far as the new act, S. 717, is concerned, I think it is a good piece of legislation. However, there are a few things from the health point of view that I would like to just briefly mention, not in a vein of being critical of the act. I am quite in accord that after 7 years we have reached a point where there are some changes that not only need to be made in the health act but also changes in the legislation that you are proposing in order to make it more effective and so that it will do the job that you originally started out to do, and I am sure, want to continue.

Very briefly, the section that is concerned with the listing of toxic materials, I think the 3-year period for the listing of those materials is entirely too long and I find it rather frightening. This list can be done within 6 months. In fact, we have had conversations with NIOSH which indicate they share our apprehension and they feel capable of complying with a 6-month time limit.

In section 104(c)(3), which requires the operators to submit accurate information periodically concerning employee exposures, we do not want the responsibility for these records, their availability and miner notification of exposure to rest solely with the operators. We feel that it is dangerously unrealistic to expect the operator to notify the miner promptly of hazardous exposures. We think this is a responsibility which should be shared by the union, by the operators and also should be involved with MESA.

In section 116(a), (b) and (c), we strongly urge insertion of the word "health" because you are talking there about safety training, but this should be health and safety training. We have been involved now for 4 years in a training program that we feel just cannot and should not be the sole responsibility of the operators. In fact, the last wage agreement makes provision for the training of health and safety committees and this shall be the joint responsibility of the operators and the union. That is well underway and has been going now for several months.

We had a program somewhat earlier than that which has been built upon. The training requires a combination of the skills, knowledge, and attitudes available from the union, MESA, NIOSH, and the operators and must be the responsibility of MESA with technical assistance provided by NIOSH.

Section 116 is really concerned with two different health and safety training programs; one is for the health and safety provisions of the Coal Act as amended and the second is first aid. The course we are handling now is limited to the union health and safety committees. We feel that this is essentially the same training course that should be made available for all miners, both those employed prior to and after the effective date of S. 717.

The miners should also receive training in first aid and cardiopulmonary resuscitation. The first aid training requires a minimum of 20 hours and the cardiopulmonary resuscitation, 8 hours. And there should be a provision for an annual refresher course of the same length of time because it is going to be rather unusual that any one miner will have at the very most, one person for which he will need to have these capabilities available.

Closely associated with the first aid and CPR training is the imminent requirement by MESA that they are going to have a vehicle designed for transportation in the mines. We feel that it's going to take someone trained as emergency medical technicians to provide this care of the miners who are ill or injured. We think that also having men trained as emergency medical technicians will provide the community with another person that has lifesaving capabilities, or life-sustaining capabilities until a physican can be located or the person can get to a physician.

The need, we feel, is all convincing for this kind of a person. They should have two in every operating section in the coal mines. It is necessary in a strip as well as an underground mine.

We have been seeking enactment of legislation in all of the coal mining States, but that is kind of a slow and tedious process. We strongly recommend that EMT training be incorporated in S. 717.

We heartily support the proposed definition of respirable dust and feel that this is tremendous step forward.

The hearing loss problem we have encountered which has been publicized in a "Survey of Hearing Loss in the Coal Mining Industry", a jointly sponsored study by NIOSH and MESA, shows that coal miners have considerably more impairment of their hearing than other workers and that probably this is in large measure, job related.

I think that today, it is interesting, we have been talking about the Walsh-Healey standard of 90 decibels. Going back in history, it's interesting and a little-known fact that for 3 days from May 17 to May 20 in 1969, the Walsh-Healey noise standard was then the now hotly contested 85 decibels. On the 20th of May there was an order published in the Federal Register and it went to 90 decibels.

We have contended for a long time that it should be 80. There is a new EPA—or not so new, a 1974 study and they recommend 75 decibels. We think that the committee could do something to urge the development of precautionary measures so we don't have this as another occupational health disease.

You have heard many, many times of the number of men and widows who are getting Federal black lung benefits. I don't mean to go through that to indicate the seriousness of the problem from a health point of view. The problems we are running into with the Department of Labor with those black lung benefits. I don't want to get into that.

We have also had a mortality study that, in addition, indicates—it is going to be published very shortly—that in addition to the dust diseases we have got more lung cancer than we thought we had in the coal miners, and we have also got more cancer of the stomach than occurs in the rest of the population. We would like to have action essential to the development of more active cycling systems on the dust. We think that despite the results of the GAO study that indicates this is the only method we have to measure dust, this needs to be improved.

It is essential it move ahead as fast as possible. We feel also, the operator responsibility for the dust program should be eliminated and that individual sampling of the miners should be stopped and the ultimate system be a continuous automatic responsibility of MESA.

On the X-ray program, so many problems we have had with a program for the working miners that the only positive suggestion that we had to accomplish the task at hand is we have urged that NIOSH be totally responsible for taking 25 percent of the chest X-rays of the working miners each year. The X-rays are to be taken on shift and the operators to continue to pay these costs by reimbursing NIOSH.

We have enough mines now, a high percentage of the mines that are being reported at 2 milligrams and there is a sufficient number at 1 milligram that we urge the subcommittee to specify a future date when all mines will operate at the 1 milligram level respirable dust. This will be a big step forward to insuring the elimination of coal workers pneumoconiosis in one generation.

It gets into problems on transfer also as you well know.

Lastly, and this has nothing at all to do with the act, except it relates very closely to the way the act is implemented. On the basis of our experience for 7 years we have had an excellent hard-driving relationship with NIOSH and before NIOSH, its precedessor, the Bureau of Occupational Safety and Health.

As a result of this experience, we strongly recommend that NIOSH be removed from within the Center for Disease Control, where it

never belonged, and be placed as a separate agency within the Public Health Service, reporting directly to the Assistant Secretary for Health. This would enable NIOSH to operate more effectively with the related agencies such as, OSHA, EPA, and ERDA and they need, in addition to being in that position, to have about an increase of 20 positions in GS–16, 17, and 18.

Thank you, sir.

The CHAIRMAN. Thank you very much, Dr. Kerr.

First, Mr. Jacobson, in the statement you presented, on the question of discrimination and protecting miners and job applicants from discrimination which results from miners exercising their rights under the law, you suggest that this provision be expanded to include protection for miners' representatives.

Would you explain why this should be necessary. Miners are protected. The representatives of the miners, aren't they miners and would be protected under the regular provisions? Or, are these outside representatives? Are you familiar with this?

Mr. JACOBSON. We have a number of people who work for our safety division on a temporary or permanent basis. There are men who go back into the coal mines who are also representatives of miners.

Also, of course, all the mines in the country are not union mines. There are nonunion mines. There are also organizations that are doing some representation.

The CHAIRMAN. Who are not employed as miners but are in a representative capacity, is that right?

Mr. JACOBSON. Yes.

The CHAIRMAN. But they might be coming into employment and, therefore, this protection should be with them?

Mr. JACOBSON. This would protect them from being blacklisted.

The CHAIRMAN. I understand. Thank you.

Mr. Jacobson, your statement recommends that statutory mechanism for approval by the Secretary of individual mine plans—and this would include ventilation and, I imagine, many other——

Mr. JACOBSON. Roof control.

The CHAIRMAN. What is the system now for approving these plans?

Mr. JACOBSON. Senator Williams, part of the problem is we are not quite sure what the system is. I can give a brief outline of what we think it is and show where it is currently ambiguous. I think that would be the best answer. First of all, the operator must submit a plan to MESA for approval. MESA then either accepts it or rejects it.

If MESA rejects it, MESA cannot say you will have this X provision in your plan. According to the interpretations of the Board of Mine Operations Appeals, MESA has to notify the operator that the plan has been rejected and give the operator a "reasonable" time to submit a new plan. We do not know what a reasonable plan is yet. There has been no ruling by the Board of Mine Operations Appeals on that.

Then, the operator submits a new plan and if that plan doesn't work, we don't know what happens; whether the cycle starts all over again. It appears that at some point MESA can cite the operator for not having an approved plan. That point is undetermined. And then MESA can issue a notice of violation giving the operator so many days to come up with an approval and then issue a closure order.

There is a question as to whether in review of that what is supposed to happen as well. We have an administrative law judge's decision that says the question of whether MESA should have approved a plan that they didn't is to be decided in civil penalty proceedings but not in proceedings for review of closure orders based upon the notice.

The primary reason we have recommended the change is that we really don't know what the procedure is. We feel it is a very important part of the act. Roof control plans and ventilation plans are really among the most important of the safety regulations and there has to be some intelligible way of figuring out how they are supposed to be promulgated.

The CHAIRMAN. I couldn't agree with you more. The last coal mine disaster we did extensive work on involved an explosion. It was the Scotia mine. The ventilation system there, if it had been described on a mine plan, it never could have been approved. It was inadequate to provide the ventilation necessary. Are you familiar with that?

Mr. JACOBSON. Yes; I am familiar with that.

The CHAIRMAN. Would you agree with that statement?

Mr. JACOBSON. Yes; I would agree with that.

Another part of the problem is that these ventilation plans and roof control plans have to be revised every 6 months so the cycle starts all over again every 6 months. However, the way it seems to be set up it's hard to get through the procedure once in 6 months and then have to start all over again at that point. It is absurd.

The CHAIRMAN. The plan at Scotia was subject to change on a daily basis as the mine progressed. It wasn't according to any orderly plan, as I could see it.

Mr. JACOBSON. I think that underscores the enforcement problem. There is a plan that is to be followed and obviously it was not being followed at Scotia which underscores the need for more effective enforcement provisions in the act.

The CHAIRMAN. This is a classic in every way, a classic for the need for many of the things that are in this bill before us, including the transfer, in my judgment.

Mr. JACOBSON. And in the judgment of the UMWA as well.

The CHAIRMAN. I wonder if we, as we continue here in mark up can have your counsel on some of the details and suggestions, Dr. Kerr?

Dr. KERR. Yes, indeed.

The CHAIRMAN. So I will not got into some of these questions now. I was interested in your comments on the time period for advisory committee consideration of proposed standards. You suggested it be no less than 30 days and no more than 90 days. The referral of those standards to an advisory committee is discretionary with the Secretary and I would assume it would be limited to the most complex standards.

I suspect that is the probability. Do you think that 30 days to 90 days is sufficient for advisory committee consideration?

Dr. KERR. I think it can be, Mr. Chairman. The thing we are concerned about is if it goes to the full 90 days, then you have the problem of the publication. You have to go if it is at all controversial to the need for hearings and then the standard has to be finally promulgated and there is still an opportunity to raise question about it. This is just an effort to speed things up.

The CHAIRMAN. How do these committees work? They are not made up of people all located in one area. They have to be brought in; am I right?

Dr. KERR. The advisory committee for the health research on the Coal Mine Act has 16 individuals, four of whom are with Government agencies, and then there are a number of them who come in from various parts of the country, usually from teaching institutions. Once in a while there will be somebody who is not an academician. Usually there is also one or two people who either are representatives of management, such as, Dr. Bundy and the industrial hygienist of Bethlehem and then myself.

The matters that come to our attention are the problem areas in health that have been confronting NIOSH and they seek to get the best advice possible from us as to a move forward. I have the feeling, after having sat on this committee for 6 years now, that it serves a worthwhile purpose.

However, it demands someone in the organization who is not only riding herd on the committee but is also aware of the problems that exist and how they would best be brought to the attention of the committee members.

The CHAIRMAN. Someone within the organization?

Dr. KERR. In NIOSH.

The CHAIRMAN. Thank you very much.

Senator Schweiker will now inquire.

Senator SCHWEIKER. Thank you, Mr. Chairman.

I don't really have too much in terms of questions. I do want to compliment the mine workers. I know I have met with you and with a number of mine workers from my State for the last 10 years who have been working on this problem. I compliment the mine workers' leadership in this area. We certainly are making some progress vis-a-vis the fact the metal and nonmetallic mines incidence indicates we have made progress. Still, we have a way to go. And there is still something to learn.

But I appreciate the work the mine workers have done and the leadership they have given in this area.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[The prepared statements of Dr. Kerr and Mr. Miller follow:]

STATEMENT

by

Lorin E. Kerr, M.D., M.S.P.H.

on

S. 717

before the

SUBCOMMITTEE ON LABOR

COMMITTEE ON HUMAN RESOURCES

U.S. SENATE

March 31, 1977

I am Doctor Lorin E. Kerr, Director, Department of Occupational Health, United Mine Workers of America. It is appropriate that seven years following the enactment of the historic Federal Coal Mine Health and Safety Act of 1969 (P.L. 91-173) that this Subcommittee, which played such a vital role in the successful culmination of the 1969 hearings, should once more review implementation of the Act and seek through S. 717 to more adequately assure the health and safety of the nation's coal miners. While the Union shares your concern about enforcement of the Act there are a number of sections in the bill concerning occupational health which need clarification or revision.

I want to make a personal plea to retain the symbolic importance of the title of P.L. 91-173. The whole flavor and importance of the 1969 Act is scuttled by entitling S.717 as the "Federal Mine Safety and Health Amendments Act of 1977." The preeminence of health in the 1969 Act is

subverted by placing it in a secondary position. Conforming the sequence of safety and health with OSHA as S. 717 is even more distasteful. Although OSHA is a good Act it is concerned with 4.7 million work sites and can never achieve the individual industrial significance of P.L. 91-173. The coal mine act was the first time Congress ever passed legislation that stipulated eradication of the occupational disease occurring in a major industry. The true import of the 1969 Act must be continued in the title and structure of S. 717 which should be known as the Federal Mine Health and Safety Amendments Act of 1977.

The definition of "mine" in Title I, Section 102(b)(3) needs clarification to assure inclusion of strip mines which occur in coal, metal and non-metal mining. The 1969 coal mine act, as you know, was confined to underground mining. However, with the enactment of the Black Lung Benefits Act of 1972 (P.L. 92-303) strip miners were declared eligible to receive these benefits. This Congressional mandate established the need for MESA to implement a dust control program for strip mines. It is my understanding that NIOSH is planning to include strip miners in the third round of chest x-rays of working coal miners. The use of asbestos in some strip mining makes it doubly important that strip mining be clearly included in the definition of a "mine." It is also necessary to include those who are defined as "developing coal miners" and are employed in the construction of mines. Often their exposures are more hazardous than other coal miners.

Section 102(a)(1) of Title II allows an advisory committee ninety days in which to develop a recommendation regarding the rule to be promulgated. The Union recommends this be reduced to thirty days. Likewise, the 120 days in the same Section should be reduced to 90 days and the 60 days

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to 30 days.

Our recommendation is based on the fact that following the expiration of these three proposed time periods, the proposed regulations will be published and hearings may follow. It could be nearly a year before final rules or regulations would be published. It is our contention that these periods of time should be shortened to hasten implementation.

Also in Section 102(a)(1) there is no stated recourse should the Secretary decide to publish in the Federal Register his determination not to take action on a NIOSH recommendation. Although the reasons may seem valid to the Secretary there should be a specified appeal procedure for those who disagree. The same would also apply should the Secretary decide not to appoint an advisory committee. There must be an appeal mechanism prior to seeking relief in the courts.

The UMWA commends the Subcommittee on the provision in Section 102(a)(3) which permits the Secretary to prescribe rules for hearings to avoid unnecessary costs or delay. This should prove helpful in hastening the final promulgation of regulations.

In Section 102(a)(4) the UMWA strongly recommends that the miners and their representatives will be informed of the existence of a standard and its terms. Moreover, the miners and their representatives must be given an opportunity to familiarize themselves with the existence of the requirements of the standard. The UMWA fails to comprehend how the operators can or will discharge this responsibility.

The Union recognizes that P.L. 91-173 makes reference to "technical feasibility" in Section 101(c). In the same Section there is other verbiage which is duplicated in Section 102(a)(5)(A) of S. 717. Since the enactment of OSHA in 1970 with the subsequent occurrence of numerous administrative problems the UMWA is now fearful of these terms and phrases. "Feasibility" conjures up the nemesis of "economic impact statements" now delaying the promulgation of OSHA regulations. It is our opinion the experiences gained under P.L. 91-173 as amended and S. 717 when enacted should be adequate. Senate Report No. 94-1198 pays particular attention on page 18 to the verbiage which we question and warns against its use to delay implementation or enforcement of the proposed legislation. While we urge inclusion of a comparable statement in the Senate Report on S. 717 we think it would be more effective to delete the phrases reading "the feasibility of the standards" and "other health and safety laws."

In Section 102(a)(5)(B) the allowance of three years for the listing of toxic materials or harmful physical agents is frightening. The Secretary of HEW should publish such a list within six months of the enactment of S. 717. It is my understanding that NIOSH shares our apprehension concerning the proposed three years and feels capable of complying with a six months time limit. Moreover, the 60 days in the same Section should be reduced to 30 days. Furthermore, there should be clarification of the situation wherein HEW would determine that a substance is toxic at the observed concentration despite the fact that this concentration conforms with a specified standard. What course of action shall be followed? The legislative history should

address this situation and encourage HEW to constantly be alert to this possibility and to act in accordance with Section 101(d) of P.L. 91-173. Particular attention should be paid to prompt publication in the Federal Register by the Secretary of proposed mandatory health standards transmitted by the Secretary of HEW.

The Union recognizes the need in Section 102(a)(6) to spell out methods of protecting miners against hazards. However, we submit that this permits the continued use of a known hazardous substance. Prevention of damage can only be assured when the use of a hazardous substance is forbidden. The Union commends the Subcommittee for the confidentiality provision of research examinations in the same Section. We maintain, however, that making known the results of non-research examinations to the operators is fully as dangerous as providing them with the results of research examinations and should be prohibited.

Temporary orders for operator compliance specified in Section 102(d)(1) should be no longer than 90 days--not six months. Applications for renewal should be filed 30 days--not 90--prior to expiration and interim renewals should remain in effect no longer than 90 days.

In Section 102(d)(2) the final two sentences should contain "and their representatives." Section 102(d)(2)(E) contains such a clarifying clause.

Section 103 needs clarification. Four advisory committees are obvious--one each for health and safety for both coal and metal and non-metal mining. The shortage of adequately trained personnel may necessitate a provision enabling individuals in certain instances to serve on more than one committee.

The UMWA recommends that the legislative history for Section 104(c)(1) clearly indicate that the specified "cooperation" must be performed in "conjunction" with the Secretaries of Labor and HEW. The connotation of the word "cooperation" is somewhat less stringent than we think is necessary.

The verbiage in Section 104(c)(2) is confined to "work-related deaths, injuries and illnesses." The difficulty of defining work-related illness" makes it essential that the legislative history clearly indicate this includes more than the chronic pulmonary diseases occurring among coal miners. Such conditions as job-related impairment of hearing, heart disease, arthritis and stroke should be included. Medical treatment of these illnesses may well be necessary as a life saving measure. For many years there were about 125 medical deaths occurring in the coal mines which have not been additionally listed in the publicly announced number of deaths attributed to accidents. Many of the 125 deaths were related to or caused by the heavy exertional demands of the job and should be included in future tabulations of "work-related deaths."

Section 104(c)(3) should require "operators to submit accurate information periodically concerning employee exposures--." This can only be done by the maintenance of accurate records. However, it is insufficient to just maintain the records--there must be the additional protection provided by requiring periodic reporting of hazardous exposures. The miner can then turn to the agency assigned the responsibility of receiving these reports when such information is needed. The UMWA does not want the responsibility for these records, their availability and miner notification of exposure to rest solely with the operators. We feel it dangerously unrealistic to expect the operator to notify the miner "promptly" of hazardous

exposures. These requirements also pose a dangerous threat to job security in that the operator may be inclined to eliminate miners exposed to those hazards having the potential for producing illness. The UMWA also recommends that all miners should be informed of corrective action being taken to eliminate hazardous exposure. This would help to assure those miners who have been so exposed. It would also prevent the development of misunderstanding and confusion. In addition, the regulations in Section 104(c)(3) "shall provide miners and their representatives with a right to observe --" rather than an "opportunity to observe." The latter is too likely to be meaningless.

The UMWA continues to recommend as we did last year in testifying on S. 1302 that Section 104(i) of S. 717 be strengthened by including "illness" such as coronary occlusion or stroke. Previously on-the-job death from these conditions were often attributed to "natural causes" and "heart failure." Regardless, they should be included in this Section. An additional measure should be the inclusion of payment for an autopsy the results of which will eventually provide information essential for developing measures designed to prevent these unnecessary deaths.

We commend the Subcommittee for improvements in Section 105, however, Section 105(d) should at least require sampling in areas of the mine adjacent to the affected area. The adjacent areas may not have been sampled at the time a violation was discovered in the affected area. Section 105(e)(1) should provide requisite "health and safety training." The same wording should also be inserted in Section 106(c)(1).

The Union heartily concurs with Section 110 and its requirement for posting of notices, orders and decisions. Past experience particularly with the health provisions of P.L. 91-173 clearly indicates the need for public exposure of all protective measures.

The UMWA again urges coverage by definition or legislative history the intent of the phrase "gives advance notice" specified in Section 111(f). Routine procedures when examined anew may reveal action which in fact is unrecognized "advance notice." Such an instance would prevail were mine inspectors putting their cap light batteries on charge at a mine 14 hours before the same mine is to be inspected.

We continue to recommend, as we did last year, that the miners withdrawn from the mines in accordance with Section 112 be paid for the entire shift and for every shift they do not work until the violation is abated and the men are permitted to return to work. Limitation of payment of wages to one week as appears to be the case in Section 112 could unnecessarily delay corrective action by the operator.

The Union urges insertion of the word "health" in Section 116(a), (b) and (c). The training programs specified in those subparts must be for both health and safety. Our experience with such programs during the last four years clearly indicates these training programs cannot and should not be the sole responsibility of the operators. In addition, MESA, not the operators, should certify as specified in Section 116(c) the miners who receive health and safety training. This training requires a combination of the skills, knowledge and attitudes available from the Union, MESA, NIOSH and the operators

and must be the responsibility of MESA with technical assistance provided by NIOSH. Only in this way can the unavoidable operator bias of the operator trainer be restrained.

Section 116 is really concerned with two different health and safety training programs. One is for the health and safety provisions of P.L. 91-173 as amended and the second is first aid. During the last four years the Union has been actively involved in teaching the health and safety provisions of the coal mine law to local union and health and safety committeemen of whom chere are about 3,000. The first program was developed by the Union's Department of Occupational Health, conducted by Penn State University and financed by a grant of $114,000 from the Bureau of Mines. The present program is nearly one year old. In accordance with the National Bituminous Coal Wage Agreement of 1974 it must be completed by December 6, 1977, the expiration date of the Agreement. This program is the joint responsibility of the Union and the operators with considerable assistance provided by MESA.

While this course is currently limited to local union health and safety committeemen it is my contention that essentially this same training course should be made available for all miners--both those employed prior to and after the effective date of S. 717. This is based on the understanding of P.L. 91-173 observed among the committeemen who prior to training are more knowledgeable about these subjects than many miners. Miners have long known that the eight hours on the job can be the most dangerous daily threat to their life. It is the worker who is in the job environment every day and knows the danger spots. The miners are too well aware of the working conditions that produce loss of appetite, aggravating coughs, hernias and

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lost fingers or legs. They confront the health and safety hazards of the job everyday they work--some are known, others suspected and many are still unknown. In the final analysis, miners must be sufficiently knowledgeable about the jobs and their exposures so that they can fully protect life and limb--there will never be enough mine inspectors or company personnel to assume this responsibility for all miners.

The time specified for training underground and surface miners should be the same, namely, 52 hours rather than the 40 hours specified in Section 116(a)(1). Section 116(a)(2) does not recognize the multiciplicity of hazards confronting strip miners which are non-existent in underground mines. For example, there is an asbestos exposure in some strip mines which is sufficiently ominous that the delegates to the 1976 UMWA Convention in Cincinnati unanimously passed a resolution recommending the elimination of the "use of asbestos in any form" from the coal mining industry. There are also excessive heat (135^{o} F plus in coal trucking cabs) and cold (20^{o} F in the cabs of cats) exposures in strip mining which are non-existent in underground mines. Furthermore, recent reports indicate that for the first time there is a higher incidence of accidents and injuries in strip mining. Finally, I am sure this Subcommittee will be surprised to hear that the problems associated with dust control and dust sampling are as vexing and at times acrimonious in surface mines as they are in underground mines.

The annual refresher course should be no less than 20 hours. The coal mining industry is still classified by safety experts as the second most dangerous in the nation. The occupational disease figures clearly indicate that in coal mining as in all of industry the death and disability traceable to job-related illnesses far exceeds the toll inflicted by accidents. It

will require many hours of continuing health and safety training to stop this needless slaughter of coal miners.

All miners should receive training in first-aid and cardiopulmonary resuscitation (CPR). The former requires a minimum of 20 hours and the latter 8 hours. The annual refresher should be the same length of time because only a small number will be called upon to use their capabilities in any one year. The important point is not so much the number of hours spent in training, but the miner's ability to perform, which is heavily dependent on attitudes, psychomotor coordination and the amount of hands-on individual instruction provided.

Closely associated with the first-aid and CPR training is the imminent MESA requirement that a mobile vehicle designed and equipped to transport an injured or ill person from the working section to the surface of the mine shall be maintained in a state of readiness to service any section in the mine within 15 minutes. Twenty-eight hours of first aid and CPR training plus the same time for an annual refresher will ill-equip coal miners to successfully operate such equipment. In fact it can be more of a menace than a help. This new development adds one more reason to those previously advanced for the urgent necessity to train some coal miners as Emergency Medical Technicians (EMT). Soon there should be two EMT miners in each operating section on each shift. There is also a comparable need for EMT miners in strip and auger mines. Certification of those passing the 81-hour EMT course would assure the men and operators of the availability of a miner with life sustaining capability. There will never be enough supervisory personnel to do the job.

The EMT training would also assure the rural and often isolated communities in which the miners live of the ready availability of individuals knowledgeable in providing life sustaining measures until a physician can minister to the illness or injury. This is an important development for mining communities where as in most other rural areas there is a dangerous lack of all health personnel. The training of EMT miners will also help contain the rising costs of medical care--a concern vital to the entire membership of the Senate Committee on Human Resources!

MESA has made about $250,000 available to coal mining states to defray the actual costs of EMT instruction and necessary equipment and supplies. Although MESA agrees with the value of the UMWA's request for funds to assist Union district officers in the development of EMT courses, the request has been denied. It is alleged the federal coal mine act does not provide the legal authority to approve the request--a position which the UMWA strongly doubts.

It is easy to opine that MESA's position is not unrelated to the operator's unwillingness to pay daily wages for those men attending the 10-week, 8-hour classes. The number of men involved at any one time would be small yet the operators conjure up such objections as lack of protection by "good samaritan" laws and a Union desire to have EMT miners classified in the contract. The latter assumes such a miner would just stand around for eight hours waiting for an accident or illness to happen in the section. It is alleged that the supervisory personnel because of their usual collegiate educational training can complete the 81-hour course in two weeks.

Such elitism and discrimination ill-becomes those who not uncommonly were coal miners at one time. Despite corporate coal mining health opinions asserting the value of EMT training for miners, the operators state that adequately motivated miners can get the necessary training by voluntarily attending 3-hour classes conducted one or two evenings per week. Currently 309 coal miners have attended these classes and are certified as Emergency Medical Technicians. Another 230 are attending similar classes or awaiting certification. This training is being provided in Utah, Kentucky, Virginia, Colorado and Pennsylvania.

These are some of the reasons for the success of the Union's struggle to secure the recent enactment of the EMT legislation in Pennsylvania. A similar bill was defeated in the last session of the West Virginia legislature but a stronger bill will be introduced in the next session and in many other coal mining states. The need should be convincing to all concerned. However, seeking enactment of legislation in all coal mining states is a slow and tedious process. Therefore, the UMWA strongly recommends that the EMT training be incorporated in S. 717. Because a large number of EMT miners will not be called upon to use these skills in a year, the annual refresher course should be a minimum of 50 hours. In accordance with a resolution unanimously passed by the delegates to the UMWA Cincinnati Convention the UMWA recommends that "miners attending EMT classes shall receive their regular daily pay from their employer."

While Section 116(d) makes provision for "mine rescue teams comprised of Federal mine inspectors" there is no recognition of the heavy

dependence such teams place upon appropriately trained coal miners. The UMWA urges inclusion of this additional expertise in the Section. There is the additional need to urge that regulations require the location of mine rescue teams in close proximity to the mines.

I now want to turn to Section 202 captioned "Amendments with Respect to Interim Mandatory Health Standards." After slightly more than seven years of experience with P.L. 91-173 it is appropriate to make new recommendations which will increase assurance that disease and disability will not be the penalty for mining coal to earn a living. The UMWA is firm in its desire to keep the Act intact. We are most anxious to avoid endangering the letter and intent of P.L. 91-173. However, there is a need to further strengthen the law. Such is the intent of Section 202(d)(1) and (2) for which we commend the Subcommittee. The definition of respirable dust which appears in Section 318(k) of the 1969 Act was gratuitously inserted during the 1969 hearings at the end of Title III where it had no relevance and is now being used by a coal mining company in a manner which could destroy the dust measuring program. The UMWA heartily supports the proposed definition of respirable dust.

Shortly after enactment of P.L. 91-173 we learned that nearly 100 percent more miners might have job-related impairment of their hearing upon reaching age 60 than the number similarly disabled because of age alone. On-the-job exposure to noise levels in excess of 80 dBA causes this unnecessary damage. A recently published study entitled "Survey of Hearing Loss in the Coal Mining Industry" was jointly conducted by NIOSH and MESA. This survey clearly indicates coal miners are afflicted with substantial hearing losses which are job-related. In addition, the

study did not support the notion that the highly intermittant nature of coal mine noise makes it less hazardous than predicted by noise survey data. A review of UMWA Health and Retirement Funds records reveals the purchase of five times more hearing aids for miners than their wives, whereas, the national ratio is equal, i.e., a male/female ratio of 1.0.

Unfortunately, Congress did not have the benefit of adequate knowledge when they stipulated in the 1969 coal mine act that the noise level would be the Walsh-Healey 90 dBA standard. Today, it is a little known fact that for three days--May 17-20, 1969--the Walsh Healey noise standard was the now hotly contested 85 dBA. This was rescinded on May 20, 1969 with the publication in the Federal Register of the first Walsh-Healey standard of 90 dBA. The UMWA has vigorously opposed this standard which until recently we contended should be 80 dBA. However, on the basis of the 1974 EPA report entitled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" we now submit that the noise standard in P.L. 91-173 should not exceed 75 dBA. MESA officials are of the opinion that the technology necessary to reduce levels of noise in coal mining well below the 90 dBA level exists or can be developed. We urge the Subcommittee to carefully review the damage inflicted by on-the-job exposure to noise and to reduce the standard to 75 dBA. In this manner you will again exert your leadership role in the prevention of another major occupational disease plaguing all workers including coal miners--job-related impairment of hearing.

When the Social Security Administration (SSA) ceased its operation of the black lung benefits program on July 1, 1973 about 225,000 totally disabled miners and 140,000 widows had been approved for federal black lung benefits. Since the inception of the SSA program seven years ago on December 30, 1969 nearly 60,000 of these disabled miners have died. It is likely that half of these deaths can be directly attributed to the dust induced pulmonary diseases occurring among coal miners. This means more than eleven men every day wheeze away their lives as the penalty for mining coal to earn a living. Were the 77 deaths for one week to occur all on the same day in the same place, I question whether discussion of dust control measures would ever be placid. The nation would undoubtedly demand immediate and inexorable compliance with mandated standards--in fact they might even be lowered.

The Department of Labor (DOL) has now received more than 105,000 black lung claims of which 51,000 have been disallowed. Only 3,800 claims have been approved. Of these, 60 percent (2,280) are receiving federal black lung benefits because DOL was unable to locate the last employer. DOL was able to locate the last employer for the remaining 40 percent (1,520) and is allowing payment of benefits for 1,000 of these because their total disability is so obvious. Payment of benefits for the remaining 520 is being held in abeyance by DOL because the concerned coal operators numbering between 120 and 130 are contesting 97 percent of the total of 1,520 DOL approved claims.

Equally distressing is the fact that about 17 percent of the working miners exhibit x-ray evidence of coal workers' pneumoconiosis.

Of these approximately one-third may become totally disabled and a comparable number with no x-ray changes may also be able to qualify for black lung benefits.

A soon to be published NIOSH report entitled "Mortality Among Coal Miners Covered by UMWA Health and Retirement Funds" indicates that contrary to earlier studies lung cancer is killing coal miners at a greater rate than occurs among the rest of the population. The report also indicates the same is true for cancer of the stomach. In both instances coal mine dust is highly suspect.

There is also grave concern about the unknown hazards of diesels underground. There seems to be a two-fold danger--the neurological distress produced by emissions and the possible synergistic action of the particulates and the coal mine dust hastening the development of coal workers' pneumoconiosis and possibly lung cancer. A recent report issued by the Bureau of Mines states the particulates could make it difficult to meet the 2 mg. dust standard. The Bureau recommends that the emission of particulates should be minimized or diesels should be located in underground coal mines where miners would not be exposed. Until these matters are clarified the coal miners refuse to permit themselves to be exposed to another unknown hazard. The miners reinforced this position with the unanimous passage of a resolution at the Cincinnati Convention calling for the removal of all diesels now in underground mines and the prohibition of any additional diesel equipment being introduced into the mines.

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The General Accounting Office (GAO) study of the dust sampling program, which the UMWA requested the Chairman of this Subcommittee to initiate, clearly demonstrated the hazard of estimating percent of operator compliance. Inherent in the study was verification of the effectiveness of Congressionally mandated ventilation and use of water in reducing levels of coal mine dust. The studay also verified the need to improve present dust sampling technology and its use. The report indicated there is no known method of dust-sampling to replace the one currently in use. Miner and operator tactics used to achieve compliance or discredit the program were also delineated. Even before the report was published the UMWA was embarked on an educational program for local union health and safety committeemen designed among other things to hasten compliance with the dust standards. While company officialdom may be dedicated to compliance there is a need for this same dedication to permeate the entire operator staff. Samples must not be limited to days when roadways are wet; miners should not be encouraged to leave samplers in the dinner hole; operators have no authority to void samples and operator weighing of samples inevitably leads to acrimonious distrust.

The UMWA is convinced the dust sampling program will only attain its Congressionally mandated effectiveness when operator responsibility is eliminated by such a technique as a continuous automatic system. Such a device appears to have been developed for use in the space shuttle. The delegates to the UMWA Convention in Cincinnati unanimously called for the development of such a systmm rather than the present

method of sampling the individual miner. We urge that this Subcommittee energetically initiate action essential for the development of a more accurate sampling system than the one currently being used; that operator responsibility for the system be eliminated; that individual sampling of the miners be stopped and the ultimate system be continuous, automatic and the responsibility of MESA.

During the 1969 hearings on the federal coal mine act this Subcommittee became aware that a dust suppression campaign must be constantly evaluated. Dust measurement by itself is inadequate. The only known method is periodic chest x-rays of the working miners. The development of new cases of coal workers' pneumoconiosis or progression of the disease provides convincing evidence of non-compliance with standards or the need to revise downward the existing standard of 2 mg. of respirable dust per cubic meter of air. Closely associated is the heretofore unknown high standardized mortality rate for lung and stomach cancer among coal miners and the exposure to asbestos in some strip mines. The first two rounds of x-rays are completed and plans are now underway for the third round. The criteria for taking and reading the x-rays must be further strengthened. In fact as with dust measurement until operator participation is removed it will be impossible to relieve the miner's suspicions about the program. Instead, the delegates to the UMWA Convention repeated once again what the UMWA has said many times since 1969 that the U.S. Public Health Service should be totally and completely responsible for the x-ray program. The Convention unanimously passed a resolution calling for

25 percent of the miners to be examined each year. The delegates were well aware of the need for 90 percent or more of the miners to have an x-ray and recommended that, the x-ray be taken on-shift rather than before or after work. The resolution also called for the operators to continue paying for the x-rays by reimbursing NIOSH. The combination of more accurate dust measurements and high quality comparable films will for the first time assure the adequacy of the information essential for eliminating the chronic pulmonary diseases plaguing the coal mining industry for decades. These afflictions like all job-related diseases are man-made and can be eliminated in one generation.

The UMWA urges that the Subcommittee make NIOSH totally responsible for taking 25 percent of the chest x-rays of working coal miners each year; the x-rays to be taken on-shift and the operators to continue to pay these costs by reimbursing NIOSH. This will probably cost the operators less than they are currently paying and will result in a universally higher quality of filsm It is conservatively estimated that the initiation of this program will require the addition of $10 million to the NIOSH budget. There will also be the need for 25-28 positions for necessary personnel such as qualified physicians and technicians.

The UMWA also recommends that the Subcommittee discontinue the use of potentially hazardous or toxic practices such as the use of diesels in underground coal mines.

MESA is now reporting that a high number of sections are operating at 2 mg. of respirable dust. There is a sufficient additional

number at 1 mg. that the UMWA urges the Subcommittee to specify a future date when all mines will operate at 1 mg. of respirable dust. Such a mandate will assure the elimination of coal workers' pneumoconiosis in one generation. It will also relieve the travail surrounding the implementation of the transfer option. While more than 5,000 miners have received notice that they may exercise this option, less than 10 percent have chosen to do so. When all mines operate at 1 mg. transfer will be an unnecessary option.

Equally important is the need for the Subcommittee to stipulate that transferred miners will continue to be paid at the same rate as they received prior to the transfer. We are convinced that the vast majority of the miners do not exercise their transfer option because of the economic penalty inflicted by the present requirement in P.L. 91-173. Realistically this means that miners are now deprived of wage increases to which they are entitled when they elect to transfer. It is economically impossible for most miners to protect their own health by exercising the option to transfer to a less dusty area of the mine. I seriously doubt that the Subcommittee in 1969 foresaw this as the insurmountable barrier which now plagues the miners. The economic restraint will automatically be removed when the mines operate at the 1 mg. level.

The legislative history concerning Section 301(c)(1) should be so written that it will be impossible to transfer any current or future MESA coal mining personnel including inspectors to OSHA.

The UMWA since the enactment of P.L. 91-173 seven years ago has developed a strong and aggressive working relationship with NIOSH and its precedent, the Bureau of Occupational Safety and Health. Our experience during this period of time forces us to strongly recommend that NIOSH be removed from within the Center of Disease Control, where it never belonged, and placed as a separate agency within the Public Health Service reporting directly to the Assistant Secretary for Health. This addition to Section 302 would enable NIOSH to operate more effectively with related agencies such as OSHA, EPA and ERDA. The Secretary of HEW should be authorized to place an additional 20 positions in NIOSH in GS-16, 17 and 18. The higher grades are necessary to attract and retain qualified occupational health professionals and reduce bureaucratic delays in promulgating regulations and performing other administrative tasks. It would also improve NIOSH capabilities for conducting research and providing technical assistance and manpower development designated in P.L. 91-173, and other Acts such as OSHA, PHS and Toxic Substances Control. Since 1972, the UMWA has routinely testified each year before Congressional Appropriations Committees urging a marked increase in the NIOSH budget and transfer of NIOSH from CDC to a position of direct responsibility to the Assistant Secretary of Health. There have been some increases but the latest NIOSH budget has been reduced by more than $2 million to less than $43 million which is 57 percent less than the essential minimum annual appropriation of $100 million.

The revisions of Title V of P.L. 91-173 appearing in Section 303 of S. 717 are fiscally disquieting. There is no reference to Section 501(e) of

P.L. 91-173 wherein there is authorization for a specific annual appropriation of $30 million for coal mine safety. In contrast in the same Section there is an almost exclusionary concern with accidents and safety manifest in the absence of any specified sum for coal mine health research. Unfortunately, this attitude is still prevalent today as noted earlier with the occasional absence of appropriate inclusion of the word "health" in S. 717. It is very apparent in the absence of any attempt to authorize an appropriation for health research. Moreover, with the amalgam of metal and non-metal mining with coal mining the $30 million authorization for coal mine safety must now be shared with metal and non-metal mining. While the amount authorized for safety research has never been appropriated, the need for additional funds is now underscored. The minimum authorization for safety research should be $60 million. While I detest "body counts" they seem to provide convincing evidence of the shocking need for at least a comparable authorization of $60 million for mine health research. The UMWA strongly recommends these authorizations which are essential for the prevention of unnecessary job-related death and disability. The research findings will also have a salutory effect in reducing occupational injuries and illnesses in other industries.
Finally these efforts will for the first time provide the impetus necessary to indicate that prevention--the hallmark of occupational health--is the major force available for the containment of rising medical care costs.

STATEMENT OF

ARNOLD MILLER

PRESIDENT

UNITED MINE WORKERS OF AMERICA

BEFORE THE

SENATE SUBCOMMITTEE ON HUMAN RESOURCES

ON

S. 717, THE FEDERAL MINE SAFETY AND HEALTH AMENDMENTS OF 1977

MARCH 30, 1977

Mr. Chairman and members of the Subcommittee, my name is Arnold Miller. I am President of the United Mine Workers of America representing 140,000 working coal miners. Last March, I appeared before this Subcommittee and presented our views on the issue of mine safety. I believe we agree it is unfortunate that the remaining hours of the 94th Congress left us unable to successfully pass mine safety legislation.

Historically, we are all aware of the Farmington Disaster of November 20, 1968 that killed 78 coal miners and led to the enactment of the 1969 Coal Mine Health and Safety Act. We are easily reminded of the Buffalo Creek disaster of 1972 and painfully aware of the Scotia disaster and Kocher disaster just months and weeks behind us. All the violations and the lack of enforcement of the 1969 Act are now committed to record. Each of these was a terrible disaster but has served toward directing the search for a legislative vehicle which would help prevent such disasters in the future.

Reports from the Bureau of Mines and the Mining Enforcement and Safety Administration since the inception of the Act through December 1976 show that 1,383 coal miners have been killed and 91,736 coal miners have suffered disabling injuries. Many thoughts and reasons have been put forth as to why coal miners have been sacrificed and maimed. There really are no thoughts and reasons that can serve to justify this.

Mr. Chairman, this Committee recently conducted an

extensive investigation into the Scotia disaster, which once again, brought to the public's attention and ourselves the dangers of coal mining. As one coal miner put it, "there is no way you can really promote mine safety without working on it fulltime". The Chairman, the Subcommittee and the cosponsors of this bill are to be commended for their continuing concern for mine health and safety.

Your Subcommittee, the United Mine Workers, and other concerned individuals and organizations have worked hard together over a period of several years to come up with legislation that would serve to correct the mistakes of the past. S. 717 represents these efforts and the UMW offers its support for this legislation. At the UMW's 47th Constitutional Convention held in September 1976, the entire rank and file delegation voted unanimously to adopt a resolution providing for the transfer of MESA from the Department of Interior to the Department of Labor. Thus, the UMW also offers its support to the transfer provisions of this legislation.

Briefly stated, S. 717 does three things. It transfers responsibility for enforcing the nation's hard and soft rock mining laws from the Department of Interior to the Department of Labor. The rationale behind the transfer continues to be that responsibility for the enforcement of the federal mine safety laws should not rest within the same department responsible for mineral production. Additionally, this legislation will significantly upgrade the 1966 Metal and Nonmetallic Mine Safety Act, an action that is long overdue. For too long, the nation's hard rock miners have worked under safety laws that are dangerously inadequate.

I am pleased to be able to appear before you today to speak

on S. 717, the Federal Mine Safety and Health Amendments of 1977. As a deep miner for 26 years, I have gained considerable experience and education in what is required to safely mine coal. In further cooperation with you, Mr. Chairman, and the Subcommittee, I would like to take this opportunity to offer some suggestions for purposes of clarification and review relative to the pending legislation before us. I submit the following section-by-section recommendations for your consideration.

The preamble of the bill should be expanded to include language to protect miners and those affected by mining activity.

Preparation Plant Construction. Proposed section 102(b)(3) at pages 2-3 of the bill would remove the protection the 1969 Coal Act gives to UMW construction workers engaged in the construction of coal preparation plants, by limiting the statutory definition of a "mine" to include only facilities "used in...the work of preparing coal, and includes custom coal preparation facilities." In contrast, section 3(h) of the 1969 Act defines a "coal mine" as including facilities "used in, or to be used in, or resulting from...the work of preparing the coal...and includes custom coal preparation facilities." Just this January(1977), the U.S. Court of Appeals for the Fourth Circuit relied exclusively on the "to be used in" language in affirming that construction workers were covered by the Act, in its decision in BCOA & ABC v. Secretary of Interior & UMWA. This problem could be taken care of by simply taking the words "or the work of preparing coal, and includes custom coal preparation facilities," and moving them up from lines 9-10 to line 8 on page 3 after the phrase "with workers underground."

Promulation of New Standards. The first part of proposed section 102(a) at page 5 would make it more difficult and cumbersome to promulgate new health and safety standards by requiring the Secretary to follow both the rulemaking requirements of the Administrative Procedure Act and the special rulemaking provisions of the Act in doing so. This problem could be eliminated by removing everything after"in accordance with" on line 11 of page 5 and before "the following provisions:" on line 13-14 of page 5.

Sections 102(d)(e) at pages 13-16 should be deleted except for the last sentence of 102(e) and the provisions of Section 301(c) of the 1969 Federal Coal Mine Health and Safety Act should be followed for request for variances. This would provide needed clarification for variances to be set aside should they prove unsafe. The provisions of 102(f) should be continued in that standards enacted by Title II should not be made subject to request for variances.

Sec. 102(g) should be changed as follows: No objection that has not been urged before the Secretary shall be considered by the court. We would recommend that the rest of the sentence be deleted. In addition, a sentence should be added to provide that if the Court of Appeals determines a stay order be issued it shall be mandated to expedite the hearing of the case.

Promulgation of Mine-by-Mine Enforcement "Plans". Many of the current health and safety standards provide that operators must comply with the provisions of "plans" promulgated for specific purposes by MESA on a mine-by-mine basis, in light of individual mine characteristics. For example, there are roof control plans and ventilation plans. However, the procedures to be followed in promulgating the provisions of such plans, and the enforcability of such provisions, has been the subject of recurrent litigation and

is still unclear. See Zeigler Coal Co. v. Kleppe, 536 F.2d 398 (D.C. Cir. 1976), and Bishop Coal Co., 5 IBMA 231 (1975).

In addition, many standards require operators to perform actions "in a manner approved by the Secretary," but it is unclear how the Secretary is supposed to do the approving, and whether what the Secretary decides is enforcable. See Zeigler, supra.

To solve both of these problems, a new section 102(h) should be added to the bill after line 7 on page 17, as follows:

> "(h) Where a health or safety standard provides that each mine operator shall follow the provisions of an individual compliance plan approved by the Secretary, an operator may initially propose the provisions to be included in such a plan, and the Secretary shall review the proposed provisions and either declare the plan in effect as proposed, or amend it and declare it in effect with such additions, deletions, or other amendments as the Secretary finds will promote the purposes of the Act. Where a standard provides for periodic review and revision of such plans, the same procedure shall be followed in promulgating such revisions. The provisions of such plans and revisions shall be enforcable as mandatory standards, but shall not be subject to the subsection (e) variance procedure. Where a standard provides that certain actions, conditions, or requirements shall be carried out as prescribed by the Secretary, the provisions of section 553 of title 5 of the United States code shall apply. Such prescriptions shall likewise be enforcable as mandatory standards, and shall likewise be exempt from the subsection (e) variance procedure."

Sec. 104 will impose a much greater burden upon the enforcement agency and all due consideration should therefore be given to increasing budgetary and manpower needs. We must concur with the need for Sec. 104.

Sec. 104(c)(3) provides miners or their representatives with "an opportunity" and should be changed to "the right" to observe monitoring or measuring, and to have access and insert "and copies of" the records thereof.

In what is Sec. 104(c)(4) the first sentence should be changed to read "all accidents, including unintentional roof falls and methane ignitions (except in any abandoned panels or in areas which are inaccessible or unsafe for inspections), shall be reported to the Secretary and shall be investigated by the operator or his agent to determine the cause and the means of preventing a reoccurrence." A corresponding change in accord with the above is the inclusion of the words "methane ignitions" on line 24 at page 21. Although roof falls are recorded as being responsible for the highest number of fatalities, the problem of controlling levels of methane gas in the mines and the accompanying problem of methane ignitions is one of extreme importance.

We must recommend that Sec. 104(d) be deleted in its entirety. It represents a weakening of the 1969 Federal Coal Mine Health and Safety Act.

As Sec. 104(f)(1) except for the last sentence is written, we feel it should be deleted and language from Sec. 103(g) of the current Coal Mine Health and Safety Act of 1969 should be substituted in lieu thereof. However, the first sentence in that section should be changed to read, "Whenever a representative of the miners or a miner has reasonable grounds to believe that a violation of a mandatory health or safety standards exists...." The provision as written represents a weakening of one of the most effective safety mechanisms a miner now has under the 1969 law.

Sec. 104(i) should be changed to include at line 6 after the word"thereof" ",and the Secretary and the operator" shall take apprppriate measures to prevent the destruction of any evidence.... and further on to read "Where the Secretary deems it appropriate to

protect the life of any person he shall supervise and direct the rescue and recovery effort." We feel this is an absolute responsibility of the Secretary.

For the same reason, Sec. 104(j) should be changed to read, "In the event of an accident occuring in a mine, an authorized representative of the Secretary, when present, shall..." Consideration should be given to adding a sentence to Sec. 104(j) which reads as follows: "Any person having direct knowledge of events leading to or surrounding the accident shall be excluded from the actual rescue and recovery operations."

Sec. 105(a)(1). On line 3 at page 27 change "believes" to "finds", on line 10 change "alleged to have" to "which has". In paragraph (2) of Sec. 105 on line 15 change "believes" to "finds" and on line 18 change "charge" to "finding." These changes constitute technical clarifications to make clear when an inspector issues a citation he is not merely making allegations but is making findings of fact.

Unwarrantable failure as set forth in Sec. 105(c)(1) should be defined in the definition section of the Act as "simple negligence". The legislative history of the 1969 Coal Act makes it quite clear that "unwarrantable failure" was to be interpreted as simple negligence but it has been repeatedly misinterpreted by the agency.

Sec. 105(g) should be deleted in its entirety. This section would prohibit the enforcement agency from issuing notices of violation after six months after the occurrence. Of recent example, in the case of the Scotia disaster, there would be no way the agency could issue notices of violation if the mine were sealed for more than six

months.

Sec. 106(b). The language between the parenthesis should be deleted in its entirety. When a violation occurs and the operator has been cited, this language serves to make easier the burden placed on the operator to correct the violation. We do not think this philosophy will aid in the protection of the health and safety of miners.

Sec. 106(c)(1) should be amended to reflect that the representative of the miners is protected from discrimination also. The same would apply for Sec. 106(c)(2). In addition, in subsection (2), upon receipt of a complaint it should be mandatory that the Secretary cause an investigation of each and every complaint. In that regard, the subsection should be further amended to read as follows:..."If upon such investigation, the Secretary determines that grounds exist to believe that a violation may have been committed, with service upon the alleged violator and the mine employee or representative of the miner or applicant for employment, alleging such discrimination or interference and proposing an order granting appropriate relief...." An additional sentence should be inserted here to read as follows: "Upon motion of the employee, if the Secretary determines reasonable grounds exist to show that a violation may have occurred, the Secretary shall order temporary reinstatement of the employee pending final determination of the claim by the Commission." The Commission should also have authority to award damages. Further, a miner should have at least 90 days to file a complaint under this section and the Commission should have the authority to weigh this requirement if good cause is shown.

Sec. 106(c)(3) should be amended to reflect that violations

of paragraph (1) of this subsection by any person shall be subject to the provisions of Sections 111(c), as well as Sections 109 and 111(a).

Review of Notices and Orders. Some of the language in the proposed sections dealing with review of notices and orders would create a great deal of unnecessary confusion. Proposed section 106(d), at line 24 on page 37, seems to say that the Commission can vacate notices of violation, "citations", even though it has no power to review their merits, and can only extend the abatement period they set. And proposed section 108(e)(1) at page 43 allows representatives of miners to apply for review of the termination of imminent danger orders, but does not empower the Commission to reinstate such orders after such review.

The former problem can be disposed of by deleting everything after "modifying" and before "such order"at lines 23-25 on page 37, and substituting "vacating or directing other appropriate relief from the Secretary's order or proposed penalty, or affirming or extending the abatement time set in the Secretary's citation." The latter problem can be solved by removing the redundant word "terminating" at line 9 on page 44 and substituting therefor the word "reinstating."

Temporary Relief. The 1969 Coal Act places important restrictions on the availability of temporary administrative and judicial relief from notices and orders issued by federal mine inspectors under that Act. That Act's sections 105(d) and 106(c) prohibit all temporary relief from imminent danger closure orders, and limit temporary relief from other kinds of closure orders to situations where (1) a hearing has been held after notification to all parties, (2) the applicant has shown that temporary relief "will

not adversely affect the health and safety of miners," and (3) the applicant has shown a substantial likelihood that the order will be vacated after a final hearing on the merits. Nor can there be any temporary relief from mere notices of violation, since there is no review of the merits of such notices, and adjudication dealing with them can only result in extensions of abatement time.

The problem is that the proposed bill eliminates many of these restrictions. Proposed section 107(a) at lines 1-2 on page 39 would remove all restrictions on the granting of temporary relief by the courts of appeals, allowing them to grant temporary relief from notices of violation, imminent danger closure orders, and other closure orders as they "deem just and proper." And while proposed section 108(e) would still prohibit the Commission from granting temporary relief from imminent danger orders, proposed section 106(d) at pages 37-38 would eliminate the prohibition on temporary administrative relief from violation notices, and do away with the restrictions on temporary relief from other kinds of closure orders except those issued in "unwarrantable failure" situations. Indeed, proposed sections 106(b) at page 33 and 111(b) at page 49 expressly give operators a right to temporary relief from violation notices on a showing of nothing more than irreparable injury.

Ironically, while the bill would hinder enforcement of the Act by removing many of the restrictions on temporary relief in notice and order situations, the bill fails to extend temporary relief to those who need it most, namely miners who are victims of safety-related discrimination. Most discrimination cases under the Act have taken several years to resolve, with the victims

being out of work until the eventual conclusion of their cases. Needless to say, this situation hardly promotes the purposes of the Act. This latter problem could very simply be resolved by adding the words "to grant temporary relief and" after the word "proceedings" at line 15 on page 35, and by adding "may grant temporary relief and" after "Commission" on line 8 of page 36.

Sec. 111(b) should be changed to read as follows: "Any operator who fails to correct the violation for which a citation has been issued under Sec. 105(a) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 for each day during which such failure or violation continues." Our reasoning here is the same as expressed for Section 106(b). We consider this to be a weakened provision. It is basic in the promotion of safety that violations be corrected immediately and not be allowed to continue.

In addition, it is recommended that the solicitor's office be given the authority and duty to proceed with civil penalty collection actions in federal district courts upon expiration of the operators 30 day period for filing for Court of Appeals review of the Commission's final order of assessment, or after a noncontested citation or notification by the Secretary has become a final order of the Commission under sections 106(a) or 106(b). U.S. magistrates should be authorized to prepare recommended decisions and orders in such cases to avoid future backlogs. The Commission's findings of fact and orders should be conclusive in all such cases, as the operators have waived court review.

Sec. 111 (l) should be deleted in its entirety and replaced

by the following language: Upon assessment of a civil penalty under any of the provisions of this section, the operator shall have 30 days from receipt of the notice of assessment to pay the assessed amount to the Secretary. If the operator desires to contest the civil penalty, he shall so note on his remittance to the Secretary. Upon receipt of a payment so marked, the Secretary shall deposit the money in a special escrow account where it will remain until a final determination is made. Failure to comply with the provisions of this subsection will result in a waiver of all legal rights to contest the violation and the amount of the civil penalty. Upon such default, the notice of assessment shall become the final order of the Secretary and shall be enforceable in the District Courts and Courts of Appeals.

Subsection (m) of Sec. 111 will become subsection (n) and a new subsection (m) should be added to read as follows: "In addition to the penalty assessed under Sec. 111(a) a penalty of not less than $1,000 shall be assessed for each violation of Sections 202, 301 through 305,307, and 313, wherever an operator has received more than 10 notices of violations or orders of withdrawal for violation of said mandatory health and safety standards within a six month period. This additional penalty shall be assessed for each subsequent violation of said health and safety standards until the operator's rate of violation of these standards falls below the national rate of violation of said standards. This additional penalty shall not be compromised."

Sec. 112. Compensation by the operator for miners idle due to withdrawal orders should be increased to cover all the time the order is in effect until the order is abated by a representative of the Secretary.

Like section 110(a) of the 1969 Coal Act, proposed section 112 does not place a time limit on miners' applications for compensation under that section, and thus mandates the application of relevant state statutes of limitations under well-established principles of legislative drafting. The problem is that the Interior Department has ignored the Congressional mandate, and by regulation placed an extremely short, 45-day statute of limitations on a miners' right to apply for section 110(a) compensation. Furthermore, the statute begins to run even before employers refuse to pay the required compensation. See 43 C.F.R. 4.561. And the Interior Department's regulation will be transferred intact unless the bill mandates a change. To solve this problem, and guard against any possibly unreasonable limitations period in state laws, a reasonable limitations period should be added to section 112. This could be done by inserting the words "within six months of an operator's failure to pay such compensation" after the words "his representative" on line 13 of page 54.

Sec. 114. On line 7 at page 58 after the word "period" add"a petition for discretionary review has been filed in accordance with paragraph 2(A) of this subsection, or" and on line 9 after "(2)" add "(B)". This is a technical clarification change where if one files on the 30th day, the order still becomes final even if it is before the Comission can act.

WITHOUT PROPER SAFETY TRAINING, A COAL MINER'S FIRST DAYS UNDERGROUND MAY ALSO BE HIS LAST. Learning a new job can be difficult for anyone, regardless of the occupation. For coal miners, a lack of on-the-job experience can mean injury or death -- unless proper

training is provided.

Yet inexperienced miners are often sent to work with little or no first-aid or safety training, and no preparation for the job they are expected to perform. Fully, 41 percent of new miners and construction workers surveyed by the UMWA Research Department revealed that their companies did not offer them any kind of training.

In December, 1976, the Mining Enforcement and Safety Administration (MESA) finally proposed new federal regulations that would force operators to start training programs for new miners, recently-hired experienced miners, and miners who transfer to new work assignments. While recognizing the urgent need for such regulations, the UMWA believes they still are not strong enough -- among other shortcomings, the rules do not call for enough hours of training and are not clear enough about the operator's responsibility to pay miners during the training period.

West Virginia has had a program of pre-employment training for inexperienced underground and surface miners for several years, and Kentucky recently passed training and re-training requirements. The UMWA is seeking similar laws in the Virginia, Alabama and Utah state legislatures. The need for strong training regulations is dramatized repeatedly, fatality after fatality and injury after injury.

With reference to the Committee's commitment and ours to mine safety for miners, based on past experiences, we recommend that serious consideration be given the following:

In Sec. 116(a) (1) the amount of training should be increased to no less than 80 hours. In subparagraph(2), the amount of training should be no less than 80 hours also. Presently, there are a very limited number of hours devoted to specific health

training, health training devices and first-aid. A safety and health training course offering 80 hours of instruction would allow for needed expansion of the present program. In subparagraph 3 the amount of refresher training should be increased to no less than 40 hours. In subparagraph 4 each miner who is reassigned a new task as an equipment operator should be trained by a certified instructor and should be certified by the Secretary to operate said piece of equipment. Certified instructors under this subsection should not have any production responsibilities at the mine. Further, no safety training program should be approved that does not provide for safety training in the safety rights of miners under the Act.

Section 116(d). Additional language should be added as follows: As soon as is practicable, but no more than one hundred twenty days after eanctment of the Federal Mine Safety and Health Amendments of 1977, the Secretary shall publish regulations which shall provide that each operator of an underground mine employing more than 50 persons shall, under supervision by the Mine Safety and Health Administration, train and re-train and have immediately available at least two mine rescue teams in close proximity to the mine site and that each operator of an underground mine employing 50 or less persons shall have immediately available at least two mine rescue teams. The Secretary shall also publish regulations which provide that mine rescue teams comprised of Federal Mine inspectors be maintained at each district, subdistrict, and where practicable, field office of the Mine Safety and Health Administration.

MESA currently maintains three mine rescue teams in each of their subdistrict offices. MESA recommends three teams --- one working under oxygen, a backup team, and a team on the surface.

At the present time, regarding small mine operations employing less than 50 personnel, MESA has to count on the big companies to come in with their rescue teams to help out. Unfortunately, it is not unlikely that it would take two to eight hours to make rescue teams available where there is no proximity from either MESA or big companies.

In future years, it will become increasingly more difficult for MESA to provide their own personnel to man what is considered sufficient rescue team operations at all mine sites.

Black Lung Transfer Program. Section 203(b) of the 1969 Coal Act gives miners who have developed simple pneumoconiosis a right to transfer to positions in less dusty areas of mines in order to prevent the advance of their disease, without having to suffer any loss in compensation. However, some mine operators have refused to pay transferees wage increases they would have received if they had remained in their former positions, and administrative relief from this practice has so far been denied. As a result, less than one-fourth of those entitled to transfer have done so.

To solve this problem once and for all, a new section 202(f) should be added to the bill after line 12 on page 66, as follows:

> "(e) Section 203(b)(3) of such Act is amended by striking out "received by him" and inserting in lieu thereof "being paid to miners performing the type of work such miner was performing."

Section 301(b)(3). Additional language to provide that any guidelines, directives, and interpretations of this Act as amended

or the implementing regulations be published in the Federal Register and mailed to all affected parties within 30 days after issuance should be included.

The present $30,000,000 authorization for coal mine health and safety is now to be shared with Metal and Non-Metal research, therefore, consideration should be given to increasing the safety research budget to a minimum of $45,000,000 for coal mine health and safety and a minimum of $15,000,000 for metal and non-metal health and safety under Sec. 501 of the Coal Mine Health and Safety Act. Just recently, before the House Interior Appropriations Subcommittee, Administrator Barrett spoke of the number of accidents caused because of the present lack of concrete health programs. He acknowledged the need for program expansion under Section 501 of the Coal Act.

Respirable Dust. While proposed section 202(e) goes a long way to eliminate the problems created by recent Interior Board misinterpretations of the respirable dust statutes and regulations, it would not take effect until July 1, 1978, and does not expressly repeal the parts of the regulations that have been misinterpreted. To solve the problem as soon as possible, proposed section 307 at page 77 should be amended by adding at the end thereof "and except that section 202 (e) of this Act shall become effective immediately," and a section 202(e)(3) should be added after line 12 on page 66 as follows:

> "(3) Sections 70.2(i) and 75.2(k) of title 30 of the Code of Federal Regulations are hereby repealed."

In conclusion, Mr. Chairman, with your permission I would like to have inserted into the record a statement by Dr. Lorin E. Kerr, Director of the Department of Occupational Health of the United Mine Workers of America on the health related aspects of S. 717.

The CHAIRMAN. Representatives of the National Coal Association are our next witnesses. We will resume with Ralph E. Bailey, chairman of the Consolidation Coal Co. and Gilbert P. Remey, president of the Rochester and Pittsburgh Coal Co.

We have got three people here and only two names.

Mr. BAILEY. Mr. Chairman, we have Mr. Tom Boettger, vice president and general counsel of Eastern Coal Corp.

The CHAIRMAN. Will you proceed.

STATEMENT OF RALPH E. BAILEY, CHAIRMAN, CONSOLIDATION COAL CO.; ACCOMPANIED BY GILBERT P. REMEY, PRESIDENT, ROCHESTER AND PITTSBURGH COAL CO.; THOMAS E. BOETTGER, VICE PRESIDENT AND GENERAL COUNSEL, EASTERN ASSOCIATED COAL CORP.; AND RALPH HATCH, VICE PRESIDENT AND SAFETY DIRECTOR, CONSOLIDATION COAL CO., A PANEL

Mr. BAILEY. I am Ralph E. Bailey, chairman of the board and chief executive officer of Consolidation Coal Co., whose principal office is located in Pittsburgh, Pa. Consolidation operates 57 mines in 8 States, employing nearly 22,000 people, and produces approximately 9 percent of the U.S. coal production. About 60 percent of our production is from underground mines.

I appreciate the opportunity to appear before you today to present the views of the Bituminous Coal Operators' Association, and the National Coal Association, regarding the proposed amendments to the 1969 Coal Mine Health and Safety Act.

BCOA is a national association of coal mining companies and represents its member companies in matters of labor relations and in the promotion of health and safety in their mines. The National Coal Association represents its member companies in legislative matters and in the promotion of coal utilization. These associations separately represent the producers of the majority of this nation's coal production.

We agree with the Congress that the first priority and concern of all in the industry must be the health and safety of its most precious resource—the miner. The coal industry has a vital interest in the continued improvement in the health and safety record of the Nation's coal mines.

Under the act, great strides have been made in improving the physical conditions of our mines, including improved ventilation, improved roof support, a drastically reduced level of respirable dust, improved electrical distribution systems, marked reduction in fires and ignitions, improved transportation of men and materials, and many other conditions that might relate to worker safety.

However, the accident frequency still is not acceptable to the industry and will not be until we have eliminated the avoidable threat of accidents from our mines. In working towards this goal, we welcome the assistance of the labor unions involved and both Federal and State governments.

The coal industry is committed to furnishing each of its employees a working environment which is free from recognized hazards. It must be realized that much of our work takes place in a relatively hostile environment that is constantly changing. Most miners have a new work place every single day as the mine entries or pits advance.

Compare these circumstances if you will to the average industrial worker who reports to the same machine, the same workplace, the same environment where his particular function is reported over and over again.

Most physical elements of the working environment in a coal mine can be controlled through the use of safe mining practices—and Federal law requires that these practices be employed. However, it must be recognized that most elements related to worker safety are not controllable by legislation, regulation, or broadly hated and deeply resented unwarranted punitive action.

The coal industry is prepared to join with you in our common effort to improve mine safety. But, I must tell you, that based on a lifelong career experience in coal mining and a careful examination of the statistical data, the proposed amendments to the 1969 act have very little chance of improving mine safety.

The 1969 act is probably the most significant piece of legislation ever enacted by Congress to regulate working conditions in an American industry. It has revolutionized coal mining operations and has impacted heavily on production cost and productivity. The act addressed itself to three main areas of mine safety: First, inspection and enforcement of technical standards, which are the physical conditions; Second, research and development, which are the machinery and mining methods; Third, education and training, which is the worker skills and motivation.

The enforcement agency concentrated its initial efforts, and properly so, on vigorous inspection and enforcement because this was the area from which immediate results would be expected. As a result, the physical condition of the Nation's mines has been substantially improved, as I've already pointed out.

Fatalities have been reduced but not eliminated. Highly significant is the fact that after hundreds of millions of dollars have been spent and millions of man-hours have been committed in the application and enforcement of the technical standards of the act, the result has been no measurable improvement in the lost-time accident frequency rate. We contend that more or different forms of enforcement will likewise fail.

Looking at the other principal areas, we see that improvements in technology are well underway in the areas of safer machines, better warning and protection, and better methods. It is Consolidation's experience with the third principal element, worker skills coupled with the motivation to use those skills, that offers the greatest opportunity for improvement.

We believe Congress would be better advised to put aside these mine law amendments for the time being and ponder the question, "Do we really need tougher laws, higher fines, and more enforcement?" or is Congress "barking up the wrong tree"? We believe if the Congress enacts additional legislation at this time, it very definitely is.

I would like to briefly review the experience of my company since the enactment of the 1969 act. Consol has always had a strong commitment to safety and we have been fortunate to have experienced an accident frequently well below the industry's average. Through careful analysis of accidents at our mines, we determined that over 85 percent of all of our accidents could be assigned to a lack of training and education, poor work habits, or lack of motivation.

In other words, even if the mine and equipment were in perfect condition and in full compliance with the law a substantial majority of the accidents would have occurred anyway.

Senator SCHWEIKER. That is a very interesting statistic. I was wondering if it would be helpful to the committee if you might give us a breakdown. I don't want you to give any trade secrets or company information, but some data on that that you could give us specifically to underscore that point. It would be very helpful to us, without betraying any internal company policy or procedures.

Mr. BAILEY. We would be happy to provide that information, Senator.

(EDITOR'S NOTE: Subsequently, the witness provided the requested information. See p. 435.)

Senator SCHWEIKER. I think that would be very enlightening.

Mr. BAILEY. Yes, indeed.

In the early part of 1973, we began the most extensive safety program in our company's history. We more than doubled our safety personnel and instituted safety programs which went far beyond the requirement of the regulations at that time. To implement this, we asked for personal involvement, beginning with me, from every member of labor and management.

Incentive programs and a major communications program aimed at influencing safe procedures in our work force were developed. Training and education of our foremen and miners in safe work procedures and practices required thousands of man-hours and many millions of dollars in wages and production losses.

But, the results have been very gratifying. Our accident frequency rate per million man-hours of exposure was reduced from 23.5 in 1972 to 11.0 in 1976, and we hope to be at around 8 by the end of 1977. This compares favorably with the national average of about 36. Other companies have shown similar results where their efforts emphasized training and education and personal motivation.

Too long there has existed an adversary approach to many of the industry's problems. State and Federal agencies, United Mine Workers and the coal operators must cooperatively approach the accident problem if we are ever to achieve meaningful results.

At a time when the Nation is calling upon the industry to supply its energy needs for years to come, we must face that challenge united. The coal industry must accept its responsibilities for the safe operation of its mines. The mine workers must be committed to working safely and to increasing their productivity, and the State and Federal enforcement agencies become more goal-oriented in the promulgation and application of mandatory standards.

Federal coal mine health and safety legislation can become a cornerstone upon which a safe, healthful and efficient coal industry can be built to serve this Nation's needs. Or, as in other societies, the law can become a millstone around the neck of the coal industry contributing to self-defeating discord and polarization among its segments and detracting from the vigor it needs to grow with prudence and responsibility.

We strongly urge that the first logical step to further improvement in safety legislation is for congressional review and oversight of the present law. Although the 1969 act has been in force for over 7 years,

no congressional oversight hearings concerning the act have been conducted. Oversight hearings, once scheduled, were preempted by the Scotia mine disaster and were never initiated thereafter.

Since its enactment, the 1969 law has been surrounded by controversy. Charges and countercharges have been levied concerning the act and its enforcement. Considering the fact that the act was novel legislation in many respects, it is indisputable that the law could not be perfect in all respects. Obviously, administration of the act over a 7-year period would, of necessity, reveal deficiencies in the law and would provide a strong factual basis upon which the act could be considered and improved where necessary.

Oversight and review hearings are clearly necessary. Such hearings, if conducted in a context other than a coal mine disaster, would enable the Congress for the very first time to appraise the 1969 law itself. Such appraisal is the only valid basis upon which wholesale amendments to the act by Congress could be justified.

Any other procedure for revision of the present law would deny Members of Congress, and the American public, a full and complete consideration of the problem of mine health and safety. It is our judgment that any other procedure would increase the likelihood that the act's deficiencies would be perpetuated and aggravated by new legislation.

Where regulation achieves greater safety, we have no quarrel. But, where it does not enhance safety, we believe that Federal regulation is misplaced and is counterproductive. Rigid, inflexible, thoughtless regulation, no matter how well intended, can have a plainly detrimental effect on achieving a safe, efficient, and productive coal industry.

It is the overregulation and enforcement of the act as an end in itself that has caused the coal industry most of its problems with the application of the act.

It would seem to me that Congress could best help the industry by reviewing the success or failure of many provisions of the present law. The areas of achievement of safety results, research and development, education and training, rulemaking, enforcement procedures, variances from standards, civil and criminal penalties, interpretation and enforcement of standards by inspectors, the responsibility of individual miners, and other areas should all be examined carefully in the light of past experience before new legislation is adopted.

We are conscious, Mr. Chairman, of the time constraints under which this committee is operating. Therefore, my presentation today only superficially reviews our concern relative to safety legislation. I am filing a more specific and detailed document setting forth the industry's experience under the present law and specific recommendations for your review and consideration. This document is the joint effort of the most able and experienced legal and safety experts in our industry.

The document contains an introductory statement, a review of the changes of the 1969 act as produced in the methodology of mining coal and including an outline of regulations that have been issued during the past 6 years or so, and an outline of the major economic and operational impacts on the coal industry, and a review of the impact on productivity and cost, a review of the impact the act has had

on reducing mine accidents, the need for oversight hearings and corrections in the existing system of enforcement, some proposed changes to the 1969 act and a critical view of S. 717.

I offer this document entered into the record and request you carefully consider its contents.

The CHAIRMAN. We certainly will. We appreciate that. There is a printing problem as far as putting it in the published record, but that will be available to all members of the committee and will be very useful. I think it would probably be wise to turn to Mr. Remey now and then we will get to our questions.

(EDITOR'S NOTE: The material referred to may be found in the Subcommittee's files.)

Mr. Remey.

Mr. REMEY. Gentlemen, I thank you for the opportunity of appearing before you. My name is Gilbert P. Remey. I am president and chief executive officer of the Rochester & Pittsburgh Coal Co. of Indiana, Pa.

I would like your indulgence for a moment for departing from my prepared text to make clear at the outset that my testimony is neither designed nor intended to reflect critically on the union representing the employees of the Rochester & Pittsburgh Coal Co., or on their committeemen. Furthermore, I want to make clear on the record that both myself and the Rochester & Pittsburgh Coal Co. support a strong successful safety program in the mines.

We agree that the time has come, as suggested by Mr. Bailey, for a new and fresh look at the underlying safety regulations at these oversight hearings. The safety director of the Rochester & Pittsburgh Coal Co. reports directly to me and is assistant to the president.

I would like to point out, as president of the company that I don't need to be hit in the head by a 2 by 4 to get my attention where matters of safety are concerned.

I would like to pick up on the second paragraph now of my presentation and again remind you that I am referring only to section 111(d).

In the 41 years since I started work in the mines, I have been involved in every phase of our company's activity, including production, sales and administration. R. & P. has been in business since 1881 and has survived wars, depressions, inflation, deflation, Republican and Democratic administrations, union and nonunion operations.

We are not the largest company by far in the coal industry nor are we the smallest, but we are one of the few independent coal companies among the top 25 producers. We produce approximately 6 million tons of bituminous coal annually, all of which goes into the steam market for the generation of electricity.

Our principal customers are two of the Nation's largest generating plants. These base-loaded plants supply electricity in large blocks to the Middle Atlantic States through the Pennsylvania-Jersey-Maryland interconnection, commonly called the PJM System. It includes the cities of Washington, D.C., Philadelphia, Baltimore, the States of Delaware and Pennsylvania, all of New Jersey and parts of New York State. PJM services about 22 million people.

About 5 million tons per year of our production is deep mined and delivered directly by conveyor belt into the two mine-mouth electric generating plants under long-term contracts of 20 years or more. Geo-

graphically, our principal office at Indiana, Pa., is located 56 miles east of Pittsburgh, Pa., and our current deep mine operations and customers are located within 15 miles of Indiana, Pa.

Indiana County, incidentally, has been fortunate enough to enjoy the lowest unemployment rate in the Commonwealth of Pennsylvania for 21 consecutive reporting periods, due in no small part to the economic health of the coal industry there.

My purpose today is to alert you and direct your attention to the very real threat to the survival of an economically sound deep coal industry posed by portions of S. 717. Gentlemen, section 111 of the proposed bill is a potential horror story for both my company and all others involved in underground mining in this country.

Section 111, in short, authorizes a 30-workday penalty closure order for certain violations and, in addition, requires payment of wages to idled employees during the closure.

Unlike any other bill that to my knowledge has ever been seriously considered by Congress, this proposal presents the real possibility of—and may even constitute an invitation to—a coal company's being entrapped by its own employees with consequences of potential financial disaster. The specter is one of seriously jeopardizing the industry's ability to supply large areas of our Nation with desperately needed energy.

Now, getting to the realities so that we can give some focus to our objections, we know that whenever something like idlement pay is available, there is a segment of the work force which will strive to take full advantage of such a windfall. Because of the logistic problems in a deep coal mine—particularly in low coal—many workers only see a member of management two or three times a shift for a relatively brief time.

In this kind of atmosphere it is not difficult to imagine a single disgruntled or unstable employee creating a situation leading up to the automatic 30-workday punitive shutdown of the mine and receive full compensation for his crime for the entire 30 days.

We all recognize that 95 percent or more of our miners are honest, hard-working, law-abiding citizens. We have, however, come to recognize in the last few years that a small segment of the work force in every mine can be described in no other terms than irresponsible.

All of us in the coal industry, particularly in deep coal mining, union or nonunion, have had occurrences, such as bomb threats and deliberate attempts, generally successful, to entrap mine operators in a violation of the Mine Enforcement Safety Act of 1969. Let me illustrate only two examples. There are many more.

We have had a MESA inspector arrive at one of our mines in response to a summons on the MESA hotline and go directly to a section of the mine which was not in active operation at the time. He found a trailing cable draped over a high voltage power line which was suspended from the roof of the mine. This is a clear violation of the act.

There were hand marks evident in the rock dust on the high voltage cable giving evidence that someone had deliberately taken the trailing cable and draped it over the high voltage power line. Our supervisors were naturally unable to find any of our miners who would admit to having been in the area where this act occurred.

It was a clear case of setting the company up—not to mention the gross irresponsibility of some individual or individuals in exposing their fellow workers to a hazard.

Another instance: A nearby mine of a neighboring company had experienced several bomb threats. They were finally able to trace one such threat to an employee's friend who had phoned in a bomb threat to the mine office and was caught in the act. When he was arrested and charged he admitted his guilt and indicated that his reason for phoning in the bomb threat and shutting this mine down was to permit his employee friend to get off the job to go to a baseball game. The mining company believes it has evidence of connivance on the part of the employee and has filed charges which are now pending before a magistrate.

It has been our experience and that of many other companies to suffer illegal strikes in defiance of contractual obligations and of orders of Federal courts.

I have never known of an occasion in 41 years in the industry where a miner would testify against a brother, no matter what the situation, whether legal or work related, and I must also admit to the fact that our supervisory employees who work directly with the miners underground and who live in the same community would probably not testify of a criminal act underground by one of the men for fear of violent retaliation.

To get back to my original premise, we are certain there are people in our mines who, being aware of the opportunity to create a situation which would result in a month and a half vacation with pay, would not hesitate to use the hotline to MESA to bring about the desired result in order to verify the occurrence of a violation which they brought about deliberately.

I spoke earlier of the financial disaster apparent and possible under the penalty section 111(d). Last Thursday I had our budget officer project what the impact would be on a typical mine of the size of ours of a 30-workday closure where wages were paid throughout the closure. The out-of-pocket loss to a company by the enforcement of the penalty provided for in section 111, which would be over and above the present penalties that we are subjected to, amounts to $1.95 million. Almost $2 million for one violation.

At another mine of the same size the cost could run as high as $2.25 million depending upon the productivity and the number of people employed at the mine. That is the effect, gentlemen, of only one such penalty imposition and under the proposed bill that could happen several times a year.

In addition to the severity of the damage done to the operator by this proposed penalty clause, consider the plight of the customer or customers who are depending upon this source of supply for either steam generation or coke oven plant operation who could be deprived of their source of energy over such a prolonged period that they could be in jeopardy of continuing to operate.

Gentlemen, your well-intentioned effort to deter major violations of the act go far beyond what reason would dictate. We already have major penalty provisions in the present law which all too often are applied indiscriminately. Section 111(d) is a draconian measure which introduces an inducement to create open confrontation between man-

agement and employee by giving employees the opportunity to punish employers with acts of criminal mischief for their own financial gain. It is wrong in principle and it is wrong in policy at a time when the coal industry must be revitalized to meet the country's energy needs.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Remey.

First of all, Mr. Bailey, in your statement you recite your company's training program activity and your strong commitment to safety. I thought it was on page 6 where you talked to your training program.

Do you have a training program?

Mr. BAILEY. Yes.

The CHAIRMAN. Just let me ask you how it works. When a new man comes to the mine—is it still only men in the mine, by the way?

Mr. BAILEY. Pardon?

The CHAIRMAN. I am saying, a new man comes to the mine. Now a question. Do you still only employ men in the mine?

Mr. BAILEY. We have both men and women.

The CHAIRMAN. A new man or new woman comes to the mine. What training does that person get right away in your mines?

Mr. BAILEY. Mr. Chairman, I am going to ask Ralph Hatch, who is the safety director and vice president in charge of safety for consolidation who is here in the room to answer that question.

The CHAIRMAN. Come forward and take a chair.

Mr. BAILEY. Before he gives you the details on how we treat the new employee, I would like to address myself to what is the overall approach to training, safety training in the company.

Last year our total training bill for employees came to, by as close as we can calculate it, just slightly under $9 million, which is a very large bill. We go at this in this way in trying to make sure that we find some way to deal with those 85 percent of the accidents which we feel are directly related to worker skills and his motivation to use those skills.

We carefully catalog and examine the accident causes and then, recognizing what was the problem, at least in our judgment what we think that is the problem, and I think a majority of this industry supports us, we have commenced what we call a safety action training program where each mine worker was subjected to a training period where he was taught exactly how to carry out his job function in the safest manner.

We have experienced engineers and experienced mining people take each one of these job functions apart and decide specifically, a, b, c, d, e, how to do that job. Then, the foreman who has the jurisdiction over the individual miner, is assigned the responsibility to teach that miner his job skills. And then he has to follow up with that and does follow up with that to audit the results and make sure that his instructions are carried out.

Another essential part of this program is to develop a safety consciousness that is coupled with a very low tolerance level for any deviation from safety policies and procedures we have attempted to enforce. That is the kind of a program we feel has the best chance of dealing with those issues, other than the physical conditions of the mines. We think that the 1969 act does deal effectively with the physical conditions of the mine.

With that, Ralph, I would appreciate if you would address the question of exactly how we treat the new employees.

Mr. HATCH. Mr. Chairman, when a new man is employed in our mines——

The CHAIRMAN. Or woman.

Mr. HATCH. Or woman now.

The CHAIRMAN. A new person. When did you break it? I know there was an old mystique, no women in the mines. I think Mrs. Roosevelt was the first that was ever permitted to go into a mine; am I right? When did you break that mystique?

Mr. HATCH. It has been within the last couple of years, sir, we have been hiring women in our mines.

The CHAIRMAN. Did someone bring an action in law for discrimination?

Mr. HATCH. Not to my knowledge.

The CHAIRMAN. It just happened. Women were mining in Europe since recorded time. Am I right on that?

Mr. HATCH. That's right.

The CHAIRMAN. Go ahead.

Mr. HATCH. What we do is put them through a 4-day orientation class. We started an orientation class somewhere around 1968, in which we had a 3-day orientation class for all new miners in one of our mines on an experimental basis down south in Wheeling. It was before the law and also before it was required in the mine workers contract.

We put them through 4 days of orientation which includes acquainting them with the mine ventilation system, with roof support, first aid, safety rules and regulations of the mine, acquaint them with the mine map. We also take them underground to show them the various types of mining machinery, also the mining conditions and practices going on in the coal mine.

This is 4 days before they ever start to work.

The CHAIRMAN. Four days. Are you familiar with the provisions in this bill before us on mandatory safety training?

Mr. HATCH. Some, sir, but Mr. Boettger is more qualified to answer that because he has been dealing with it.

The CHAIRMAN. Mr. Boettger, are you familiar with Sec. 116, beginning on page 62?

Mr. BOETTGER. Yes, Senator.

The CHAIRMAN. We require that new miners shall receive no less than 40 hours of training. That is pretty close to your 4 days.

Mr. HATCH. It's 32.

The CHAIRMAN. And this training shall include use of self rescue devices, respiratory devices, hazard recognition, escape ways, walk-around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the tasks to which the worker will be assigned.

These are pretty generally what you describe. I have a feeling a lot of what we are doing here is redundant because you are already doing it at Consolidation. That is the way it impresses me, not only in this area but maybe in some others too. Do you have anything to comment on in the training?

Mr. BOETTGER. The only comment we would make with respect to the training provision, Senator, is that many of the provisions that the

companies are following—many of the training programs they are following are part of the last contract agreed to in collective bargaining.

Our only suggestion is we be careful that the training provisions in this act don't run afoul of the collective bargaining process.

The CHAIRMAN. That is a good observation. We should have that if we can get it.

Mr. BOETTGER. We have made these comments in a part of the submission.

The CHAIRMAN. In the broader materials Mr. Bailey presented?

Mr. BOETTGER. That is correct.

The CHAIRMAN. How about this specifically? Are there provisions of the contract dealing with this area?

Mr. BOETTGER. We do make comment on page 110 with respect to 116(a)(1) of your proposed bill, that the national bituminous coal wage agreement does have a program for at least 4 days for inexperienced underground miners and a 40-hour provision might be in conflict with that.

Mr. HATCH. Incidentally, Senator, some States, such as West Virginia, have an 80-hour program for all men or women employed in the mines.

The CHAIRMAN. Are they under the same contract?

Mr. BOETTGER. Certainly.

The CHAIRMAN. The same contract but they have, for some reason, regionally developed the longer training program?

Mr. HATCH. That is right.

The CHAIRMAN. Thank you very much. That is excellent.

Mr. Bailey, I appreciate your suggestion to us that we can do more oversight. And I will tell you that in this area and in many other areas we agree, the more oversight we can get the better our legislative product will be. I don't know how familiar you are with the oversight this committee has engaged in over the years since the 1969 Act became law. It can never be enough to begin with, but it has been quite substantial and we do have an opportunity in addition to engage a very effective and efficient arm of the Congress, the GAO, and GAO has also done some most professional work in the field in the operation of the law and its administration.

We call on them all the time. While we can't be on the road as much as we would like to see how things are working out, they are. We have, however, and you are quite right, responded as members to field trips, particularly following disaster situations. We have spent a great deal of time, members of this committee and the House, about a year ago on such oversight.

That oversight accelerated our drive to include certain new provisions and protections in the law. It is a year later and it hasn't been done but a lot of the ideas we developed following that experience have been included. I know that the fatalities at Scotia represented 17 percent of coal mine accidental deaths last year, 10 percent of total mining deaths.

I have got to be careful what I say because I don't know what is happening in terms of cases in court. I had better not particularize.

Let me just go into the civil penalty closure order provision of our bill. It applies only to those operators who willfully or with gross

negligence violate a provision of the act where there is created an imminent danger. That is the trigger for a closure order. We protect against the possibility of a worker setting you up—you used that expression in your statement. The bill says that "any miner, or miners found by the Commission who have willfully, or with gross negligence contributed to the violation, or violations" shall be shut out of any of that compensation.

I am reminded, and Mr. Boettger can recall for me, there was a plea to the Supreme Court that this taxation situation was a confiscation and one of the justices said, not while this court sits—who was that?

Mr. BOETTGER. I don't recall but I know of what you speak, Senator.

The CHAIRMAN. By the same reasoning, there are courts and justices of law. You are not going to be set up by any employee and you are not going to be closed unless there is that situation of willfulness of gross negligence. I think you used the expression gross negligence, so you have a feel for it.

Mr. BAILEY. I believe that came from Mr. Remey's testimony.

The CHAIRMAN. Was it you, Mr. Remey?

Mr. REMEY. Might I suggest, Senator, the Commission in attempting to find the miner guilty of setting up his company would have a very difficult job because of the discouragement on the part of the miners of one miner testifying against a brother. Unless he were actually caught in the act by a member of management it would be an almost impossible situation to discern.

In our company mines we have 45 miles of conveyor belts. We cannot oversee every single inch of that conveyor belt at all times. Things could happen that we can't find. There could be evidence for whatever the inspector believes it to be, whether he believes it to be gross or willful negligence. We don't think we can control the actions of the miners in every aspect of their job, and I tried to make that clear in my testimony.

It is a most difficult job because of the logistical layout of the mine, which is spread over such a vast area.

Mr. BAILEY. I would like if I might—pardon me.

Senator SCHWEIKER. I was just wondering would it make any difference to you, Mr. Remey, if we provided during that closure period that a worker only got half pay or two-thirds pay? Would that be a factor in what you are saying?

Mr. REMEY. I don't know how to answer that question. I would have to think about that.

Senator SCHWEIKER. The worker would be on your side.

Mr. REMEY. Quite frankly, the thing that bothers us the most is the closure order and any kind of a reward to somebody for doing wrong. This is a fearful thing.

Senator SCHWEIKER. The problem we have, and I am not disagreeing with the point you are making, but I just want to see if there is some way to solve our problem. Our problem, as the chairman well knows is, as we said to Scotia and some other areas, is repeated violation after repeated violation. And the penalties bore little relationship to the quanity of the violation, nor did they encourage compliance, because there was just no impact on somebody who really didn't want

to play like the two gentlemen sitting here do—I respect your companies. Your companies have been good companies in this area and you are out of the field in this respect.

Our criticism of inaction isn't directed toward you. The question is how do we get the guy who is cheating and what do we do with him? I recognize in what you say that we don't want to penalize the good guys who are doing right, as your companies are doing, but how do we address the other problem I have mentioned?

Mr. REMEY. Could I have the liberty of turning the microphone over to Mr. Boettger again? He has some comments he would like to make in response to your question, Senator.

Mr. BOETTGER. I recognize, as all of us do in the coal industry, that the Senate had a particular situation in mind when they had written this particular provision of S. 717. What we respectfully submit, however, is before either this provision, which was designed for a specific set of circumstances is adopted, or any of the substantive changes of this nature are adopted, that this committee take the time to examine the entire scope of the enforcement of the act, look at it in its entirety and come to grips with the question of whether the existing 1969 act, with all the enforcement tools presently in it, won't solve the questions and problems that are viewed to be with it.

It may be there are some administrative aspects of the existing law that could clarify the situation more than coming up with substantive changes to the law itself. We submit that perhaps if this committee were to take that opportunity and to conduct indepth oversight hearings into the administration of the 1969 act, that it may come to an entirely different conclusion than it has in drafting this particular legislation.

Senator SCHWEIKER. Number one, I do agree with your premise here about training and education. I think that is a very valid point and I think up until this bill we have somewhat overlooked that. I concur with that. I think that is a very valid point.

No. 2, I also agree we shouldn't write a law that penalizes the operator who is trying to do it right. I agree with that. And I agree on the oversight. As much oversight as we have had, this is something that requires continual oversight, so I agree with that.

The problem we have, though, is when we had the Scotia hearings, that was sort of a test case on this very area. You had people who just didn't listen, who didn't care and didn't pay any attention. How do you get them to conduct a training program and motivate their people if they didn't care in the first place?

I am not quite sure I know the answer to that. I am not saying this is the vehicle, but we need some vehicle or mechanism to get the attention of the guys who are cheating on the system and making your figures bad and making your industry pay more and tagging everybody with problems in spite of the records that companies like yours have.

Mr. REMEY. Senator Schweiker, may I make a comment? At our Jane Mine, we have had an average in 1976 of 2.4 inspections per day by Federal inspectors. Jane Mine is our largest mine. I did not know the number of inspections by Federal inspectors of the Scotia mine preceding the disaster or at any time during the year.

Mr. BAILEY. Senator Schweiker, I also would like to add that we have clearly stated that we completely support any new attempt to try to improve, legitimately improve health and safety in the mines. There is no quarrel between us on that subject. But the question that you pose, and many other similar questions, are so complicated that we are completely convinced that if you give us the full opportunity to present our views and examine the provisions of the 1969 act in detail that you will come to the same conclusion that we have, that you must deal with this 85 percent of accidents that are caused by some other reason other than those provisions that deal with the physical conditions in the mine.

I do not know the circumstances involving Scotia, and it is my understanding that that investigation is not complete. But, I personally am convinced that the 1969 act has dealt effectively with the physical conditions in the mine and that all those provisions dealing with ventilation and other physical conditions, if they are applied or complied with and carried out where no one deviates. But again, you have to come back to personal motivation, you can legislate and regulate all you care to and set up physical technical standards, but let one man leave a regulator open or not do those things that, hopefully, we can teach him and train him to do and then problems happen.

I would like to add a little bit more on this subject of civil and criminal penalties and punitive action. First of all, don't overlook just plain basic labor relations. It's easy to write these things perhaps into law but the way they get carried out in the operation sometimes is another matter.

Human nature being what it is you have to be extremely careful that what you are not providing is an atmosphere in which you can add to the very bad adversary relationship that exists in the coal fields today. Goodness knows we've got enough problems and I am hopeful that over time between the coal mine operators and the United Mine Workers and the other unions that are involved we can do something about this because if we don't then I think our chance of doubling the output of the American coal industry in the next 10 or 12 years, which has been our assigned responsibility and one which we have accepted, our chances of doing that are going to be virtually nil.

And one more thing on the subject of punitive action. One of the very big problems with which we have to deal if we are going to double the output of our industry is to provide all the technical managers, all the engineers, miner supervisors at all levels in order to conduct this work. There is a very growing and alarming build-up of resentment taking place within our industry today of great worry to me. I am seeing the very managers that we need to recruit and train to carry out the mining operation making an exodus away from the mining industry because they are not willing to accept responsibility for a situation over which they do not have full control.

A mine worker today is only liable for smoking in the mine. I could recite several instances where failure can take place and the supervisor can be cited even though he had no control over the situation. I mentioned a moment ago not advancing the tubing as is prescribed, or the roof bolter not properly spacing the roof bolt to comply with the roof control plan, or not properly splicing or taping up a damaged cable, or not properly tightening a plate on an electrical control box.

I might mention there that a preliminary look at the data would indicate that about 40 percent of all the violations that are written up deal with the electrical distribution system in a mine but only one-half of 1 percent of the accidents that are taking place in the mine relate to the electrical distribution system.

It's things of this kind that we think we ought to have the opportunity to present to this committee to review how he 1969 act has worked. I could give you a number of other instances; not cleaning out the water sprays, not reporting mechanical defects when they are found, not setting temporary roof support properly, not making the methane test exactly on time, not tightening the roof bolts up to the proper torque. There are all kinds of instances where the coal worker himself must bear some responsibility for the carrying out of the provisions of the act.

And so, I submit to you that you must give much thought and careful consideration before you add any to the punitive action that is provided for already in the 1969 act.

Senator SCHWEIKER. What is your position, Mr. Bailey, on the transfer of MESA from Interior to the Department of Labor?

Mr. BAILEY. As I said, our position here is one we strongly advocate, that oversight hearings be held so we can review the viability of the current safety laws that we now have. We want to make sure that we have an opportunity to test the viability of all the provisions of the present law.

If we are given the assurance that those oversight hearings will be held we can support the transfer interdepartmentally. In the absence of those oversight hearings then our position is neutral.

Senator SCHWEIKER. Thank you, Mr. Chairman.

The CHAIRMAN. I had been distracted and didn't follow all of this colloquy you had with Senator Schweiker, but I feel it was important and I will read it later. We have another emergency on another front.

I am coming back again to closure and the criteria found in the cloure order section of willfulness and gross negligence. We have seen so much of the law violated and where it was known that the situation was hazardous and dangerous. Citations followed. The condition was corrected.

In one situation the condition repeated itself. This was ventilation. It wasn't a conveyor and it wasn't any of the physical aspects, it was a ventilation question and the ventilation appeared to be totally inadequate. It was cited and corrected within a week. And within a week, the same problem would recur—not enough ventilation. It went on, as a matter of fact, for a long period and always this pattern of return to insufficient ventilation—that all stopped when the explosion came. This is the one that led me particularly to say we have got to find more effective tools to deal with that kind of situation. That had to be, by any legal or lay standard, a grossly negligent operation that permitted a return, and return, and return, indeed a dozen times, to an unsafe situation where there was gas and there wasn't ventilation sufficient under the law. Ventilation that was certainly inadequate carry off of the gas.

These are the situations that we are worried about.

Mr. REMEY. May I respond, sir?

The CHAIRMAN. Yes.

Mr. REMEY. I believe there are in the 1969 Act as it exists today, provisions for closure of a mine for gross negligence, or for willful disregard of the law or for imminent danger. I might point out in our own company we have closed sections of our own mines ourselves before we were required to or mandated to by MESA.

I think the thing that most disturbs the coal industry is the fact that you have offered an inducement to our men to set us up and confront us with situations that we don't know anything about until a MESA inspector gets there and responds to a hot line call. They could be very critical.

There is no way that we know of that you would be able to prove that this was due to the gross and willful negligence of the operator.

The CHAIRMAN. Excuse me. I just realized we are voting in the Senate. We will have to recess so I can get over there. I am glad we had this discussion. While I know what we are trying to do, we were told the present law wasn't adequate to meet some of the situations we discovered. We haven't finished the consideration of this bill. All your testimony will be a great help to us. Thank you.

[A recess was taken.]

The CHAIRMAN. We will reconvene with the testimony of the American Mining Congress: Gordon Miner of the Hecla Mining Co., Langen Swent of the Homestake Mining Co., Larry Casteel of the St. Joe Minerals Co., and Edward McCabe of Hamel, Park, McCabe & Saunders.

All right, gentlemen, proceed.

STATEMENT OF GORDON M. MINER, VICE PRESIDENT-OPERATIONS, HECLA MINING CO.; ACCOMPANIED BY LAURENCE CASTEEL, DIVISION MANAGER, ST. JOE MINERALS CORP.; LANGAN SWENT, VICE PRESIDENT-ENGINEERING, HOMESTAKE MINING CO.; AND EDWARD A. McCABE, HAMEL, PARK, McCABE & SAUNDERS; ACCOMPANIED BY ROBERT W. LONG, DEPUTY GENERAL COUNSEL, AMERICAN MINING CONGRESS, A PANEL

Mr. MINER. Thank you. We will try to brief our oral part as much as possible.

My name is Gordon M. Miner. I am vice president of operations for Hecla Mining Co., and chairman of the AMC Noncoal Mine Safety Committee. I have already acknowledged the people with me.

Our oral presentation this morning will be divided among the four of us. However, we will submit at a later date a detailed section-by-section commentary on S. 717 for inclusion in the record.

The CHAIRMAN. That is fine. We will receive it for the record at this point.

[The information referred to and subsequently supplied follows:]

Section-by-section Analysis of

H.R. 4287

and

S.717

The Federal Mine Safety and Health Amendments Act of 1977

by the

American Mining Congress

Set forth below are the section-by-section comments of the American Mining Congress on H.R. 4287, the Federal Mine Safety and Health Amendments Act of 1977. The AMC submits these comments on behalf of its members in the metal and nonmetal mining industry. Regarding its members in the coal mining industry, the AMC is submitting a separate communication to the Labor Standards Subcommittee.

As a preface to the following, it should be stated that the AMC is vigorously opposed to combining coal and noncoal mine health and safety under one legislative umbrella.

These comments should not be construed as perfecting amendments which, if adopted, would necessarily make the bill acceptable, and should be read in conjunction with AMC's oral testimony presented before the Subcommittee March 29, 1977.

Definitions and Applicability

102(a) interim standards (bill p.2)

Section 102(a)(1) of the bill would strike the word "coal" wherever it appears in section 2 of the Coal Act. This would have the effect under section 2(g) of providing that:

> Congress declares that -- (g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards ....

It appears that this is an oversight inasmuch as the bill does not provide for any interim mandatory health and safety standards (other than those already contained in the Coal Act) and indeed should not. Health and safety standards should be proposed and promulgated by the administering agency. The law must be flexible enough to permit administrators to modify regulations as necessary to meet changing conditions and technology.

"mine"

Section 102(b)(2) would amend section 3(h) of the Coal Act which defines the term "mine". As amended "mine" is defined as it is in section 2(b) of the Metal Mine Act. Also impoundments, retention dams and tailings ponds have been included.

102(b) jurisdiction (p.2)

In addition, the definition should make it clear that the operator shall have an option regarding facilities which serve both a "mine" as well as another non-mining operation (for example a railroad between a mill and a plant; a transformer station serving both a mill and a plant) as to whether such facilities are part of the "mine" or part of the other non-mining operation.

"imminent danger" (p.3)

Section 102(b)(4) would also apply the definition "imminent danger" contained in section 3(j) of the Coal Act to all mines. That definition is deficient because it has been interpreted to apply in cases where men are not present in the area "endangered." This deficiency could be corrected by expanding the definition as follows:

> "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 to a miner if action is not taken immediately to remove such person from the area endangered or to remove the danger.

Section 102(b)(5) would add the definition of "Commission" under subsection (o), meaning the Federal Mine Safety and Health Review Commission established under this Act. In our comments on section 302 of the bill, we recommend that if any changes in appellate procedures are made, an independent commission be established to hear cases involving metal and nonmetal mines. Thus, this definition should be revised as follows:

> (o) "Commission" means the Metal and Nonmetal Mine Safety and Health Review Commission established under section 102(b)(5) of this Act.

Duties

201 general duty clause (p.4)

Section 201 of the bill would amend Title I of the Coal Mine Act to add a new section 101 applicable to all mines containing a so-called "general duty clause," which provides as follows:

> "Sec. 101(a) Each mine operator (1) shall furnish to each miner employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or harm to such miner;..."

This provision is similar to section 5 of OSHA. There is however, a subtle and major difference in wording: Section 5(a) of OSHA provides as follows:

> "Sec. 5(a) Each employer--
> (1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees;..."

The deletion of the phrase "serious physical" in the bill makes this section completely unacceptable and unworkable. Apparently this clause would require a mine operator to furnish a place of employment, free from "recognized hazards" likely to cause any "harm" whatsoever to a miner. It is not difficult to see how this could be broadly interpreted to include common maladies such as sore feet and blisters.

The metal and nonmetal mining industry opposes the inclusion of a "general duty clause" in principle. If there are "recognized hazards causing or likely to cause serious physical harm" there are ample rulemaking procedures provided under the existing Act to develop

standards to deal with such hazards. To let an inspector determine on an ad hoc basis when this clause is being violated amounts to a denial of due process of law.

Section (b) of the "general duty clause" provides that miners subject to the Act shall comply with the health and safety standards applicable to their own actions and conduct. It is important to recognize that health and safety is (or should be) an important personal concern and responsibility of the individual miner, as it is of the operator.

Safety and Health Standards

201 rulemaking

Section 201 of the bill amends section 102 of the Coal Act which provides procedures for rulemaking, by in essence, substituting section 6(b) of the Occupational Safety and Health Act, and making it applicable to all mines.

102(a) as revised (p.5)

In section 102(a), as revised, the phrase "including standards for mine rescue and fire fighting operations" should be deleted as superfluous. There is no question that the Secretary can promulgate standards in those subject areas. In subsection 102(a)(1) of the bill after the word "promulgated" the words "revoked or revised" should be inserted to make it clear that where the Secretary determines that a standard may require revocation or revision in order to serve the purposes of the Act, he can act. Also, in section 102(a)(1), as well as in the corresponding language in section 6(b)(1) of OSHA, it is stated "the Secretary may request the recommendations of an advisory committee." Consultation with an advisory committee should be mandatory. Making consultations optional encourages bypassing the committee for the sake of expediency. The current trend in rulemaking, which is to seek maximum participation of affected parties in the regulatory process, should be encouraged. It is a serious error to permit any bureaucracy in Washington to rely solely on publication in the Federal Register, and the receiving of comments from the public in its rulemaking.

consultation with advisory committees

102(a) rulemaking (p.7)

The 30-day period after publication of a proposed standard in the Federal Register, during which interested persons may submit written comments on data, is clearly insufficient. The majority of American businesses which are affected by such standards rely on organizations such as the American Mining Congress in Washington, to notify them that regulations have been proposed, and to perform the invaluable function of consolidating the views of

time for comments

affected members. A 30-day period is insufficient for a trade association to notify its affected members, request comments, hold meetings of its committees concerned, which likewise will submit comments, receive input from its affected members, consolidate them into an industry position and then forward them to the appropriate Federal agency. An examination of the record would clearly show that the government itself very often takes months from the time a standard is conceived until it is published as proposed rulemaking. No irreparable harm would be cuased by allowing an additional thirty days for industry to comment. The thirty day period should be changed to sixty days.

APA hearings (p.7)

Under revised section 102(a)(3) although a hearing may be requested on proposed rulemaking, the hearing is not required to be held in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 554). Further, this section does not require the preparation of an inflation-economic impact statement, or a cos-benefit study in connection with proposed rulwmaking. These are serious deficiencies.

102(a)(5) rulemaking (p.7-8)

objective criteria

The last sentence of revised section 102(a)(5) and its counterpart under OSHA (6(b)(5)) provides, "Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired." The standard promulgated should always be expressed in terms of objective criteria and of the performance desired. There is no rational basis for permitting a qualification. Too often standards have been promulgated on the basis of insufficient data, suppositions, and inference, in some cases in complete disregard of scientific evidence. (underlining added).

102(a)(6) warning labels (p.10)

The corresponding section under OSHA (6(b)(7)) provides as follows:

> "Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such location and intervals, and in such manner as may be necessary for the protection of employees". (underlining added).

environmental monitoring (p.10)

Compliance with the language used in the bill, "to assure the maximum protection of miners" could impose requirements which go far beyond that which is necessary for the protection of miners. For example, under the bill it could be argued that continuous monitoring of all sections of the mine must be maintained in order to assure the maximum protection. This goes far beyond the common sense approach to require what is necessary to ensure the safety of the miners, and could be prohibitory. This is another example of the use of "absolutes" which is unnecessary and highly undesirable from the standpoint of those charged with administering the law as well as those charged with compliance, because the required standard of performance cannot be achieved.

medical exams (p.11)

The fifth sentence in revised section 102(a)(6) provides that, "The results of such (medical) examinations or tests shall be furnished only to the Secretary or the Secretary of Health, Education, and Welfare and at the request of the miner, to his designated physician." Although the problems which can arise with respect to releasing medical reports are well known, if monitoring is to be meaningful to an employer's health program, it is essential for him to be apprised of the data which may be revealed as the result of such medical examinations. It would, of course, be highly desirable for an employer to know the effects on the health of each individual miner of his working environment, so that corrective actions may be taken. However, with the legal difficulty involved in releasing such records, it would be appropriate for the results of such examinations to be submitted to the employer with the name of the individual removed. This would enable the employer to compile necessary data and records so that he may keep informed on how the working environment is affecting his employees generally. To make a health program as effective as possible such information is essential.

102(a) rulemaking (p.11)

102(a)(7) new standards cannot reduce protection (p.11)

This provision effectively casts in stone any standard which is ever promulgated. It fails to recognize that technology and knowledge do change and expand, thus, discouraging innovation and development. This does not serve to improve health and safety, but does often hamper productivity. With the protections provided in properly drawn rulemaking provisions, such a restrictive provision is unnecessary and should be deleted.

102(b) emergency temporary standards (p.11)

The corresponding provision in OSHA is section 6(c)(1), which provides as follows:

> "(c)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5,

United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register, if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger." (underlining added).

We stronly object to the inclusion of this provision. Normal rulemaking procedures are adequate to deal with any hazard that is likely to be discovered. If the danger is such that harm might be immediate, there are provisions regarding "imminent danger" in the existing Metal Mine Act adequate to deal with such danger. All too often rules, regulations and even laws are passed in a crisis atmosphere without sufficient regard for their consequences, and without providing an opportunity for adequate research and discussion prior to their enactment. For example, sodium cyclamate was banned for use in "diet" soft drinks because it was found to have caused cancer in laboratory animals. However, it appears that a human being would have to drink from 138 to 552 12 oz. bottles of soft drink per day to get an amount comparable to that causing effects in mice and rats; to get an equivalent amount of oil of calamus, also banned, an individual would have to drink 250 quarts of vermouth per day. Report No.93-275, to accompany H.R. 8619, "Agriculture, Environmental and Consumer Protection Appropriation Bill, 1974," House Committee on Appropriations, June 12, 1973.

"emergency standard" (p.12)

Section 102(b)(2) provides that the emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of that subsection. Thus, the so-called "temporary" standard could be in effect for nine months. Section 102(b)(3) in the second sentence states that, "The Secretary shall promulgate a standard under this paragraph no later than nine months after publication of the emergency standard as provided in paragraph (2) of this subsection." Thus, apparently the Secretary would be required to promulgate the standard even if the rulemaking procedures would show the standard to be unnecessary. This procedure is completely inadequate

102(d) temporary noncompliance (p.13)

We endorse this provision with the exception that the interim order should be allowable for at least one year, because of the inevitable delays in holding a hearing and reaching a final decision.

102(f) no variances for standards already in effect (p. 16)

Section 102(f) provides that the variance procedure and temporary orders permitting limited noncompliance under subsections (d) and (e) of section 102 shall not apply with respect to standards in effect on the effective date of the Act, with the exceptions of sections 202(b) and (c) and section 305(a) (of the Coal Act as amended by S.717 or H.R. 4287). In effect, this section provides that there is no temporary relief or variances at all because over the past several years virtually all of the conditions and situations in mines which require standards have been dealt with, and standards have been promulgated. Under subsection (f) an operator will never be able to get a variance from a standard even if he can demonstrate that his employees will be safer under noncompliance with the standard, if the standard in question was in effect on the date of the Act. This provision will surely have the effect of stifling research and innovative advances in mining technology which could provide safer conditions, for example, self-supporting jacks and remote control mining.

102(g) challenging standard's validity

Section 102(g) states that no objection to a standard shall be considered by the court if it wasn't advanced before the Secretary -- unless it can be shown that "extraordinary circumstances" made that impossible. This section apparently would mean that no one could challenge the validity of a final standard unless he had objected to or at least commented on it when it was proposed. This is an infringement on due process. An operator might choose not to comment or object to a proposed standard if in its proposed form it did not seem to him that it called for any action on his part. But, after all comments and objections are in, the Secretary may promulgate a final standard different from the one proposed and having a serious impact on that operator. Yet, under this provision he cannot challenge it since he did not comment on or object to it when it was proposed. This provision can lead to needless litigation. At a minimum it will prompt the formality of comments and objections merely to preserve the standing necessary to challenge the validity of final standards. This will cause unproductive and unnecessary delays in the promulgation procedure.

Advisory Committees

103(a) advisory committees (p.17)

The American Mining Congress strongly endorses the use of advisory committees by government agencies, particularly in the rulemaking process as it relates to metal

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and nonmetal mine health and safety. However, the appointment and consultation with a committee by the Secretary should be mandatory.

Inspections, Investigations, and Recordkeeping

104(a) inspections & investigations (p.18)

Unfortunately, this provision allows more than one agency to inspect the same operation. This multiplicity of inspections causes confusion, delays and is often counterproductive. There is no need to allow representatives of the Department of Health, Education, and Welfare such blanket authority to "inspect". OSHA contains no similar provision under section 103(b)(2) of the existing Coal Act that authority is limited:

> "For the purpose of developing improved mandatory health standards, the Secretary of Health, Education, and Welfare or his authorized representative shall have a right of entry to, upon on, or through, any coal mine." (underlining added)

Grants of fovernmental authority should always be limited to what is necessary to accomplish the legislative purpose. Also, we should endeavor to resolve jurisdictional conflicts between government agencies before the fact rather than create them by unnecessarily giving two agencies authority to do what one can accomplish.

and nonmetal mine health and safety. However, the appointment and consultation with a committee by the Secretary should be mandatory.

four per year

104(a) inspections & investigations (p.19)

Section 104(a)(2) requires the Secretary to make inspections of all mines at least four times a year and prohibits advance notice of inspections. It is unwise to "lock" the Secretary into conducting four inspections a year in all mines because it would severely restrict him from making the most efficient use of his available inspection force. It may develop that certain mines requrie one or two inspections a year based on their accident record, while others may require seven, eight or more. The Secretary should have the flexibility to make a determination as to which mines need the most frequent inspections and to utilize his inspection force accordingly. The prohibition against advance notice of inspections also contained in section 104(a)(2) cures a problem that is more apparent than real. Even if the operator of a metal or nonmetal mine had advance notice of an inspection, he could not possibly come into compliance with the hundreds of regulations which have thus far been prmulgated in order to avoid enforcement actions by an inspector. Advance notice does, however, permit the operator to make appropriate personnel available to the inspector for assistance in the proper inspection of the mine.

Section 17(f) of OSHA provides:

> "Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall upon conviction, be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both." (underlining added).

Congress has recognized that there are certain situations in which advance notice may be necessary or desirable in order to conduct a proper inspection. It would be error not to grant such flexibility to the Secretary in carrying out mine inspection.

104(c)(2) record-keeping (p.20)

Section 104(c)(2) gives the Secretary authority to prescribe regulations for the purpose of effectuating recordkeeping requirements, but it does not specify that such regulations must go through the same rulemaking procedures as health and safety standards under section 102. All regulations should go through the same rulemaking procedures. It is no less a burden upon metal and nonmetal mine operators to comply with unnecessary

or ill-conceived recordkeeping regulations than health and safety regulations. Such regulations could be interpreted as procedural and, therefore, exempt from some of the provisions in the Administrative Procedure Act. However, with the incredible volume of record-keeping requirements and other reams of paperwork required of businesses by the Federal, as well as State and local governments, any new requirements in this area should be treated as substantive and be fully subjected to public scrutiny just as regulations requiring new equipment or modified procedures.

104(c)(3) "potentially" toxic materials (p.20-21)

The phrase "potentially toxic materials" is too indefinite and should be deleted. Conceivably any material is potentially toxic if taken in large enough quantities.

104(c) miners observing monitoring (p.21)

The metal and nonmetal mining industry has no objection to miners or their representatives having access to the results of monitoring or measuring. However, monitoring requires special training and no useful purpose is served by having untrained personnel "observe".

records open to "interested persons" (p.22)

The metal and nonmetal mining industry strongly objects to any requirement that records be kept open for inspection by "interested persons" who may have no connection whatever with the mine or the miners. This is clearly an unnecessary invasion of privacy and private property and invites all sorts of mischief by well-meaning, misdirected groups and individuals who have no legitimate interest in such records. If the government wants "interested persons" to have access to such information (within the limits of the Freedom of Information Act) let the government provide such access.

104(e) "walk-around" (p.22)

The so-called "walk-around" provision is similar to section 8(e) of OSHA and section 103(h) of the Coal Act. However, in the bill this provision contains several unique features. It provides that the representative of the miners who participates in the inspection "shall suffer no loss of pay as a result of his participation in the physical inspection."

The American Mining Congress does not oppose allowing a representative of the miners, where one has been selected by the miners, to participate in an inspection, although we question the value of such a procedure. We do vigorously object to the requirement that the miner be compensated for his time spent during a "walk-around". Under labor contracts, workers are paid

for hours worked in a particular job assigned by the employers. Participation in a "walk-around" is not "work" in the sense that it benefits the pursuits of the operator. Compensation for time spent in other than company-directed work is best handled under company policy and collective bargaining and contractural agreements between the parties. Section 104(e) further provides that more than one representative from each party (the operator and the miners) may participate in an inspection where it is determined by the inspector that such additional participation would aid the inspection. One can easily see how this could get out of hand. Inspectors are, or should be, specially trained to perform their duties. Having a number of persons following them around the mine for the purpose of "aiding" an inspection can have no other effect than to hinder them in the performance of their duties, serves no useful purpose and can itself cause hazards.

104(e) "walk-around" (p.22)

We also vigorously oppose the implication that the representative of the miners need not be an employee of the operator.

104(f) miners can call for inspection (p.23)

Unfortunately, there is no requirement in this section (or in section 8(f) of OSHA or 103(g) of the Coal Act) that the person discovering imminent danger notify the operator immediately. Certainly this doesn't promote the stated objective of the Act which is immediate abatement of imminent dangers and hazards which may result from the violation of standards. To permit an individual to call for an inspection must be considered an extraordinary remedy. At the very least, it should be mandatory that the indivudial discovering the imminent danger give immediate notification to the operator then, if abatement is not accomplished within a reasonable time, he may call for an inspection. The operator should be notified immediately of the existence of an imminent danger. Waiting for an inspector to arrive before moving to correct the situation which "could reasonably be expected to cause death or serious physical harm" is not only ridiculous but smacks of stupidity.

104(f)(2) miners give notice of violations during inspections (p.24)

This provision which is identical to section 8(f)(2) of OSHA, is pruely vindictive and does nothing to improve the health or safety conditions in the mine (or any other work place under OSHA for that matter). If the miners are truly concerned about their health and safety, they should be required to notify the operator of violations or imminent dangers upon their discovery so that corrective action may be taken. Rather, this provision encourages disgruntled miners to keep a little book of violations to display when the inspector comes around, possibly at their request. It further provides

incentive to ensure that violations do exist when the inspector arrives. The section goes on to characterize the review of a refusal of an inspector to issue a citation as a "case". This puts an inspector in the position of having to justify such a refusal and severely limits his discretion. Thus, the value of having him trained as an expert in such matters is seriously impaired. In situations where an inspector, in the excercise of his good judgment, determines that a violation does not exist and issue no citation, he can be accused of malfeasance without any real defense. Any assistance he may receive from the operator would surely be characterized as self-serving.

104(g)(1) records & reports (p.24)

This provision more properly belongs in a separate section with other recordkeeping and reporting.

104g)(2) general rulemaking

This provision should be a separate section.

104(h) "dangerous mines" (p.25)

This provision was obvioulsy intended to apply to coal mines which may liberate excessive quantities of methane. This provision should not be applied to metal and nonmetal mines. In any case, the Secretary has authority under other sections of the bill, as well as existing law, to provide however many inspections he deems necessary (see section 104(a)).

104(i) 104(j) authority of inspector to direct rescue and recovery (p.26)

Under the broad definitions of "accident", contained in 30 CFR 58.2(b) (for metal and nonmetal mines), the situations in which these provisions could be applied are obviously numerous. In effect, they permit a representative of the Federal Government to confiscate private property without due process of law. This provision is also a violation of the Fifth Amendment to the Constitution which provides "nor shall private property be taken for public use without just compensation." Assuming the Secretary's representative exercises bad judgment and causes a greater loss of life or injury than might have otherwise been the case, who is liable? Assuming his bad judgment causes loss of an entire mine or section of a mine, would or could the government respond in damages under existing law? Representatives of the Secretary certainly should be consulted and act as advisors during emergencies, but they certainly should not be given supreme authority over rescue and recovery work. We seriously doubt that any inspector would want such responsibility. It is doubtful that most inspectors would be sufficiently familiar with a particular mine to make decisions which might be critically important, within the time available

to effect rescue operations. Proper operation of the various systems in a mine, such as the ventilation system or electrical system, are critical in the event of an accident if rescue and recovery operations are to be successful. Important decisions involving such facilities should be left to those most familiar with them and not assumed by an individual having only casual familiarity with them.

Citations and Orders

105(a) citations & orders (p.27)

The issuance of a citation or a "notice of violation", as they are termed under the existing mine safety laws, must be based on more than a mere belief by an inspector that a violation exists. Certainly inspectors should be qualified enough to make a finding that a violation exists. The follwoing sentence which appears in the comparable section of OSHA (9(a)) has been deleted:

> "The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health."

Thus one of the best features of OSHA has been deleted from the bill. It is counterproductive to require an inspector to issue a notice of violation or citation for the technical violation of a standard which is not directly related to improving safety or health conditions.

105(a)(2) willful violations (p.27)

It is doubtful that an inspector would be qualified to make such determinations. Matters of willfulness or gross negligence shold be determined by a tribunal, qualified to make factual determinations based upon a record, which includes the right of a person charged to present his case. If an inspector has a belief that a violation was willfully committed or committed with gross negligence on the part of the operator, he is free to so testify at a hearing.

105(b) closure for failure to abate (p.27-28)

This is the most effective type of provision for enforcement of health or safety standards in metal and nonmetal mines. The vigorous and equitable application of this provision can effectuate the law and the standards promulgated under the law with no other enforcement tools.

105(c) unwarrantable failure (p.29)

The American Mining Congress vigorously opposes the inclusion of this "unwarrantable failure" provision. This concept was originally included in the Federal Coal Mine Safety Act Amendments of 1965 (P.L. 89-376) "to stem certain recurrent violations of safety standards in all underground coal mines." (See Senate Report No. 1055, March 4, 1966). It was operative only with regard to "unwarranted" violations which could "significantly and substantially contribute to the cause or effect" of a mine disaster. It was carried over into the Coal Act of 1969 as an enforcement tool for all standards until the penalty system became operational. If upon a first inspection of a mine under the 1969 Act an inspector found that the operator had made no attempt to comply with the regulations but could not find imminent danger, he could find that such failure to comply was unwarranted, and upon finding a second such violation during the same inspection or during a subsequent inspection within ninety days, issue an order of withdrawal. Theoretically to fill the gap between the time the Coal Act was passed, an effective inspection program under the new law had been established, and all mines inspected and brought into substantial compliance. That period has passed regarding coal mines as well as noncoal mines. Virtually all mines are in substantial compliance with existing standards under the Coal Act and the Federal Metal and Nonmetallic Mine Safety Act.

Our objections go beyond the fact that we believe these provisions to be unnecessary. They are also simply unworkable. The issue as to whether a violation was warranted or not can only be determined as a matter of law after a full and com;lete hearing of the facts. An inspector cannot make an on-the-spot judgment as to which violations are warranted and which are unwarranted. His decision by its very nature must be arbitrary. It can be argued that any violation of any standard is unwarranted since the Coal Act and this bill provides mandatory penalties for all violations.

105(d) dust samples (p.30)

105(d) time-weighted averages (p.27)

There is no requirement in section 202 that the samples used to determine whether the applicable limit on the concentration of respirable dust has been exceeded, be time-weighted averages. "One shot" samples, which do not consider the average exposure, can give a highly inaccurate "picture" of the true hazards to health and should not be used to determine overexposure. Also, the requirement in 105(d) that samples be taken each production shift during the abatement period for violation of the applicable dust limit clearly serves no useful purpose.

Procedure for Enforcement

106(a) notification of penalty (p.32)

The fifteen day limitation within which an operator may notify the Secretary that he wishes to contest the citation or proposed penalty is insufficient. Under section 105(g) of the bill, the Secretary has a six month period to determine whether or not a citation will be issued. The operator should have at least thirty days during which he may have his counsel and technical personnel review the citation and the facts leading up to the issuance of the citation and determine whether or not a contest should be initiated. There should also be a provision for an extension of time upon request of the operator.

106(a) penalty closure order (p.32)

We strongly object to the inclusion in the Secretary's notification of a "proposed civil penalty closure section 111(d) in addition to the proposed civil monetary penalty," where the citation contains a charge under section 105(a)(2). As discussed in our comments regarding section 105(a)(2), an inspector is not qualified to make legal determinations of willfulness or gross negligence based upon a one-sided field examination.

106(b) failure to abate after citation-penalty (p.33)

This is a second penalty being assessed for failure to abate, in addition to the original penalty for the violation itself and, in addition to any order of withdrawal which may have been issued for failure to abate, in addition to a possible penalty closure order and criminal penalties. The premise upon which the double penalty is based is the "Secretary having a reason to believe..." This places the entire burden on the operator. Due process should require the Secretary to make a determination that a violation has not been corrected before taking such drastic action, rather than basing it on a mere belief and thereupon issuing a notice to the operator to which he must respond within fifteen days.

106(a) 106(b) failure to contest

Under both sections 106(a) and (b) the violation and the penalty assessed become automatic if the operator fails to notify the Secretary within fifteen days that he intends to contest the citation or the proposed penalty. Due precess should require the Commission to make a determination based upon the facts (1) that a violation did in fact occur and (2) the amount of the penalty which is warranted based upon the criteria set out in the Act, where the operator fails to respond to the Secretary's notice. Obviously, no law of such scope which contains any sort of monetary or other

sanctions could operate successfully if a full hearing were required where the operator does not contest the fact of a violation and wishes to pay the penalty where one is assessed. However, where the operator does nothing to respond to a "proposed" penalty, it is highly arbitrary to permit the government to collect fines by operation of law without even establishing a record that a violation occurred and the amount of the penalty, if any, which is warranted, based on specific criteria. Even the Coal Act in section 109(a)(3) requires the Secretary to publish a decision incoroprating his findings of fact that a violation did occur and the amount of the penalty which is warranted where an operator fails to respond.

106(c) discrimination (p.34-35)

Employees certainly should not suffer discrimination for the exercise of their statutory rights. Hopefully, such statutory rights will be reasonable and limited to provisions which can be shown to be related to improving health and safety conditions in the mine. However, the provision that "applicants for employment" be protected is highly objectionable. There are adequate civil rights statutes in force to protect applicants for employment from discrimination by prospective employers. Such laws are broad enough to cover situations where an employer may be using the practice of blacklisting former employees. Only those having an actual employee-employer relationship with the operator should be covered by the bill.

106(c)(2) discrimination hearing (p.34)

relief

This provision calls for the rehiring or reinstatement of the employee to his former position with back pay and interest. What would be the measure of relief with respect to an applicant? It can easily be seen how providing such "protection" for applicants is wholly inappropriate. Also note the comparable provisions of OSHA and the Coal Act do not contain the "with interest" provision.

106(c)(3) discrimination (p. 35-36)

Since the Secretary has made an investigation of the facts in such a situation, he should be made a mandatory party to any such proceeding.

106(c)(3) discrimination civil penalties injunctions (p.36-37)

The last sentence of 106(c)(3) provides that:

> Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of section 109 and 111(a) of this title.

Section 109 relates to injunctions, and section 111(a) relates to civil penalties. The inclusion of injunctive relief to compel an operator to comply with the law is not objectionable. However, it is highly inappropriate to provide for the imposition of civil penalties under this section. An examination of the cases which have arisen under section 110(b) of the Coal Act (equivalent to section 106(c) of this bill), reveals that charges of discrimination involve complicated fact situations usually revolving around a legitimate interest in maintaining employee discipline. If an employee has been discriminatorily discharged and prevails at a hearing, he is of course, made whole by reinstatement with back pay. To additionally subject the operator to a possible $10,000 civil penalty for exercise of what he considered his responsibility to maintain discipline is unwarranted. Any operator would certainly have to consider this possibility prior to disciplining an employee for a health or safety violation which occured in a fact situation which could be turned around to appear that the disciplinary action was discriminatory. Adding penalties to such situations can do nothing to improve safety or health in the mine, but certainly would hurt good labor relations, which are essential to an effective safety program.

106(d) notice of contest (p.37)

This provision is similar to section 105(a)(1) of the Coal Act and section 10(c) of OSHA.

OSHA in section 10(c) has the additional provision:

> Upon a showoing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation.

This bill does not, but should, allow the Secretary the option of making such a finding.

Judicial Review

107 judicial review (p.38-39)

There is no justification for granting "any person aggrieved" by an order of the Commission the right to obtain a review of such an order in any United States court of appeals. It is certainly appropriate for any person adversely affected to have such a right of appeal. Third parties who are not directly affected or concerned with the outcome of a case should not be permitted to intervene. It is highly inappropriate to allow those coming under the jurisdiction of a health and safety statute to be put in a position where they can be attacked by self-styled crusaders.

107(b) judicial review enforcement Secretary (p.40)

There is no objection to granting the Secretary the right of appeal. However, it should be mandatory that the Secretary file his appeal in the court of appeals for the circuit in which the mine is located, except by mutual consent of the parties. It is highly unlikely that any action, in which the Secretary files an appeal under such a provision, would be filed anywhere other than the U.S. Court of Appeals for the District of Columbia Circuit. The hardship this can work on operators is obvious.

damages for closure

One apparent oversight of the drafters was the omission of a provision allowing the reviewing court to award damages, or at least order a trial on the issue of damages, where it is determined that a closure order issued by the Secretary was unwarranted. Also, where pursuant to the provisions of section 104(i) or (j) the Secretary has issued orders or assumed control of recovery and rescue operations at a mine which ultimately resulted in the unwarranted loss of property or life, the court should have authority to award damages. If it is determined to be a compelling social policy that the government have authority to assume such extraordinary degree of power, and control over private property, then it should likewise be a compelling social policy that the government assume liability and responsibility for the consequences of its actions.

damages for closure

Procedures to Counteract Dangerous Conditions

108(b) "potentially dangerous conditions" (p.42)

The inclusion of the word "potentially" makes this provision highly objectionable because it imposes virtually no bounds on the inspector's authority to make findings under this provision. Conceivably any situation is "potentially" dangerous. The word dangerous should be inserted before the word "conditions" wherever it is used in section 108(b). Otherwise, an inspector has practically limitless authority to generate proceedings before the Secretary in which the operator

is placed in a position of having to provide "reasonable assurance...that the continuance of mining operations under such conditions will not result in an imminent danger." The initial burden should be on the Secretary to show that there is a "danger".

108(c) withdrawal order requirements (p.43)

It would be appropriate to require that any order issued under section 108(b) also contain a detailed description of the conditions or practices "which cause and constitute a dangerous condition which is likely to develop into a situation of imminent danger."

108(e)(1) review of orders (p.43)

There is no justification for the ten day limitation contained in the bill. At least thirty days should be allowed for filing an application for annulment or revision.

108(e)(2) expedited hearings (p.44)

Although the intent of this provision is excellent, we think it is more precisely stated in section 105(a) of the Coal Act:

> In view of the urgent need for prompt decision of matters submitted to the Secretary under this section, all actions which the Secretary takes under this section shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

The above quoted language better expresses the need for a prompt resolution of the issue as to whether a mine or part of a mine should be closed. Obviously, "Commission" would have to be substituted for "Secretary".

Posting of Notices, Orders, and Decisions

110 posting of orders (p.46)

OSHA regulations provide that posting shall be for three days, or until the violation has been abated, whichever occurs first. The requirement for posting for thirty days serves no useful purpose.

110(b) mailing of notices (p.47)

There is no similar provision in OSHA. We have no objection to the Secretary providing copies of such notices or orders to the representatives of miners. However, we do object to the last sentence which provides:

110(b) "public inspection"

> such notice, order, citation, or decision shall be available for public inspection.

It should be clearly stated that such notice, order, citation, or decision shall be made available for public inspection by the Secretary. As stated in the bill, it is unclear as to whether the operator or the Secretary is responsible for making such copies available. Since the operator is already responsible for posting a copy on the bulletin board, there is no useful purpose to be served by requiring him to maintain another copy for public inspection. Certainly, the Secretary has better facilities for providing such inspection.

110(c) delivery of notice to "agent" (p.47)

There is no similar provision in OSHA. It should be made clear that an inspector should make an attempt to deliver any such notification to a responsible offiical of the operator and not to rely on delivery to any employee of the operator, who may technically qualify as "agent", as being sufficient.

110(d) filing name of mine operator (p.47-48)

It is unclear who has the responsibility for seeing that the mine health and safety official receives copies of notices and orders. This should be the responsibility of the Secretary. This would induce inspectors to contact health and safety officials at the mine during inspections and will ensure that such officials will receive notification, as well as other operating personnel who may be at the mine during the inspection. Since there is a prohibition against advance notice of inspections (see section 104(a)(2) of the bill) there is no guarantee that such health and safety officials will be available during or after the inspection.

111(a) civil penalties (p.48)

Under the bill, as under the Coal Act, it is mandatory that a penalty be assessed for each violation regardless of whether the violation is serious or not. The amount of the penalty is dependent on a number of factors discussed below. Under OSHA, the only mandatory civil penalties are for serious violations (subsection (b)), and for violations of posting requirements (subsection (i)), and in each case the maximum civil penalty is $1,000.

AMC opposes mandatory penalties

The American Mining Congress is opposed to the imposition of any mandatory penalties. Experience under the Coal Act has shown that judgments made in the implementation of such provisions (in attempting to apply the penalty criteria) require a substantial amount of information ordinarily unavailable to the individual charged with making the judgment. Thus, judgments made are often arbitrary and serve to generate a great deal of litigation, tie up a substantial portion of the inspection force in hearings, but do not compensate by

inducing a higher degree of compliance with the standards. A properly ordered system of penalties should be remedial and not punitive. Under the terms of the bill, it would be impossible for an operator to avoid the imposition of monetary penalties regardless of his best efforts to achieve compliance. Penalties have been assessed under the Coal Act for the most minor technical violations having little or no real bearing on the health or safety of the men in the mine. Such unwarranted assessments have spawned numerous hearings, conferences and a substantial amount of red tape and paperwork, none of which has contributed to health or safety in coal mines.

OSHA

OSHA has a certain degree of flexibility in its penalty provisions:

1. Discretionary penalties of up to $10,000 for willful or repeated violations (section 17(a)).

2. Mandatory penalties of up to $1,000 for serious violations (section 17(b)).

3. Discretionary penalties of up to $1,000 for nonserious violations (section 17(c)).

4. Discretionary penalties of up to $1,000 per day for failure to correct a violation within the time allowed.

111(k) (p.46-48)

The criteria prescribed in section 111(k) of the bill for determining the amount of the penalty by the Commission are:

penalty criteria

1. The gravity of the violation.

2. The good faith of the person charged.

3. The history of previous violations.

4. The appropriateness of the penalty considering the size of the business.

111(a) & 111(k) (p.48-52)

These criteria are modified by the following:

> Provided that, in proposing civil penalties under this Act the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

This proviso only applies to proposed penalties of the Secretary and not to penalties assessed by the Commission. In the equivalent provision of the Coal Act, the criteria which must be considered in the proposing

of penalties are:

Coal Act penalty criteria

1. The operator's history of previous violations.
2. The appropriateness of the penalty to the size of the business.
3. Whether the operator was negligent.
4. The effect on the operator's ability to continue business.
5. The gravity of the violation.
6. The demonstrated good faith of the operator charged.

OSHA sec. 17(j)

Thus, under the bill, the Commission would not consider negligence and the effect on the operator's ability to continue in business in assessing penalties. This is a serious deficiency. In considering the "history of previous violations," it should be mandatory that the number and type of inspections that the mine in question has been subjected to be taken into account.

111(d) penalty closure order (p.50)

Mines do not remain static while closed. The forces of nature can cause a mine, and mine equipment, to deteriorate at an alarming rate if left unattended. Maintenance crews rely heavily on regular production personnel to call to their attention areas needing repairs. Thus, such closure can actually allow hazardous conditions to develop and cause closure to extend well beyond thirty days since "violations" will occur in a closed mine regardless of the efforts of maintenance crews.

pay for miners

Note that the closure order shall further provide that during the period of closure, the operator pay the miners at their regular hourly rates for the hours they would have worked had the mine not been ordered closed, except that any miner or miners found by the Commission to have willfully or with gross negligence contributed to the violation or violations which gave rise to the closure order shall not receive such pay. Under section 106(a), the Secretary shall also propose a civil penalty closure order as well as a monetary civil penalty where an inspector has charged under section 105(a)(2) that a violation was willfully committed, or committed with gross negligence, and to have subjected a miner or miners to imminent danger.

The complete lack of fairness in this section of the bill is shocking. Note that there is no requirement that the violations be caused by the operator for this

provision to apply. A miner can willfully cause a serious violation, even in complete disregard of company policy and specific of company policy and specific instructions, another miner can call for an inspection resulting in a penalty of up to $10,000, the entire mine can be ordered closed for up to thirty days, and they all get a paid vacation! The operator is liable even if subsequent review shows the order to have been invalidly issued for section 104 closure orders (see sec. 112).

criminal penalties Coal Act OSHA

Under section 17(e) of OSHA a willful violation which results in the death of any employee can upon conviction result in a fine of not more than $10,000 or six months, or both, and for subsequent convictions, a fine of $20,000 or one year, or both. However, the bill provides in section 111(e) that in addition to the civil penalty and the civil penalty closure order under section 111(d), any operator who willfully violates a standard or order shall upon conviction be punished by a fine of not more than $25,000 or one year, or both, and for subsequent convictions $50,000 or five years, or both. Notable differences are that under the criminal provisions of the Coal Act (section 109(b)) and the bill (section 111(e)) it is only necessary to prove that there was a willful violation. Under section 17(e) of OSHA it must be proven that there was a willful violation and that violation caused the death of an employee.

111(e) criminal penalties (p.50-51)

111(d) penalties (p.50)

Let us examine what the effect of section 111(d) of the bill might be in practice:

1. A willful violation is proven in a mine employing one hundred men, and
2. The violation is shown to have subjected a miner to an imminent danger.

What is the maximum penalty which might be imposed? If the mine is ordered closed for a period of thirty days and the average earnings of the miners was $1,000 per month, the penalty would be $100,000, in addition to the costs of lost production and the costs of reopening the mine, not to mention possible criminal prosecution under section 111(e) which provides a $25,000 fine and inprisonment for up to one year, or both, for a first offense. It must be kept in mine that since section 111(d) is a civil "remedy", the burden of proof is not "beyond a reasonable doubt" but the much lighter "substantial evidence" rule.

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111(f) penalty, advance notice of inspection (p. 51)

OSHA in section 17(f) provides that any person who gives advance notice of any inspection, without authority from the Secretary or his designees, shall upon conviction be punished by a fine of not more than $1,000 or by imprisonment for not more than six months, or both. Our position with regard to advance notice of inspections in discussed in our comments regarding section 104(a) of the bill. We reiterate here, however, that advance notice should be allowed under certain conditions as is the case under OSHA.

should allow advance notice

111(h) penalty, failure to post (p.51)

This penalty is clearly excessive since the posting of notices has no direct bearing on the safety or health of the men in the mine. Regardless of the best intentions and efforts of the operator, something as fragile as a notice which must be open for inspection is easily removed or damaged. Since this is a civl penalty and not criminal, there is no requirement that it be proven beyond a reasonable doubt that the operator caused a willful violation of the posting requirement.

111(k) (p.52)

There are some notable omissions in the criteria specified for the Commission to consider:

penalty criteria

1. Whether the violation was caused by an individual in complete disregard of the operator's safety rules or practices or in disregard of specific instructions of the operator (if so, no penalty should be assessed).
2. Whether the "violation" was de minimus, or had no direct or immediate relationship to safety or health (if so, no penalty should be assessed (see section 9(a) of OSHA)).

"summary review"

The Secretary should not be allowed to rely on a "summary review" of the information available to him in proposing penalties. The Secretary should be charged with making findings of fact based upon the criteria specified.

assessment procedure

wou

Under the bill exactly what originally happened under the Coal Act would reoccur. The office to which the Secretary delegated the duty of proposing penalties would quickly degenerate into a rubber stamp operation of clerks glancing at citations and making arbitrary, capricious and even frivolous guesses at what the "appropriate" penalty should be. To say that this is highly prejudicial to the operator is an understatement. The operator's decision, which under the bill must be made within 15 days, to request a hearing before the Commission would be based in large measure upon the

amount of the penalty which is proposed by the Secretary. Many requests for hearings would not be based upon substantive matters of fact or law but rather on whether the operator charged thought he could get a more reasonable penalty assessment after a hearing before the Commission. Further, there is no requirement in section 111(k) (nor in section 106) that the Secretary in proposing penalties make a finding of fact that the violation has indeed occurred.

111(i) penalty against miners (p.51)

This provision was intended to apply to coal mines, and has no general applicability to metal and nonmetal mines. It is noted, however, that this is the only section which provides an enforcement mechanism directly to miners.

111 other sanctions (p.52-53)

The penalty provisions discussed above must also be considered, along with the other sanctions provided in the bill, to get a true picture of the punitive nature of thislegislation. In addition to the penalties, the Secretary under section 108 would be authorized to issue a withdrawal order (not to be confused with the penalty closure order) upon finding that an imminent danger exists. In addition, under section 108(b), the Secretary would have the authority to issue a withdrawal order after a hearing if he finds that a "potentially dangerous condition" exists which has not yet resulted in an imminent danger, if he also finds that reasonable assurance cannot be provided that continuance of mining operations will not result in an imminent danger. Under section 105(b), the Secretary would have the authority to issue an order of withdrawal if upon reinspection of a mine he finds that a violation described in a citation issued during the previous inspection has not been totally abated.

In addition, to these sanctions the Secretary under section 109 of the bill may institute an action for a temporary injunction or restraining order to enforce compliance with any order or decision issued under the bill, or to enforce his inspection authority and his right to gain admittance to a mine. The combined impact of these provisions obviously goes far beyond what is necessary to effectuate the policy espoused by the bill and existing legislation, namely to improve health and safety conditions in mines. Oppressive penalties and other sanctions are not only unnecessary, they are very often counterproductive. Fair and vigorous enforcement of existing legislation and standards as to metal and nonmetal mines would have a much greater impact on improving health and safety conditions in mines than enactment of this bill. There is such a thing as putting too many teeth in a law.

Entitlement of Miners

112 double pay (p.54)

This is another example of a violation of due process. The operator is placed in the completely untenable position of either complying with an invalid order of withdrawal, and thereby compensating his men during the time they are idled, or failing to comply with the order, paying double during the period the men work, and in addition, facing possible criminal prosecution under section 111(e).

112 pay miners during closure (p.53-54)

This provision should be amended to provide that pay for time not actually worked will only be awarded where it is determined after a full hearing that the operator was in some manner negligent, and then it should be limited to pay for the balance of the interrupted shift.

Administrative Procedures

113(a) Mine Safety Admin. (p.54) AMC opposes transfer to Labor

Section 113(a) should be consolidated with section 402. The American Mining Congress opposes the transfer of mine health and safety enforcement to the Department of Labor and will elaborate on that in its discussion of section 402.

Amendments with Respect to Interim Mandatory Health Standards

202(a) interim health stds. (p.65)

Section 201(b) of theCoal Act provides that it is the purpose of Title II of that Act to provide, to the greatest extent possible, that the working conditions in each underground (coal) mine are sufficiently free of respirable dust concentrations in the mine atmosphere during the period of his entire adult working life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such period. Although this is a laudable goal, we think it inadvisable to use absolute terminology such as "entire adult working life without incurring any disability". Compare this with section 6(b)(5) of OSHA which provides "the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealth with by such standard for the period of his working life." It must be recognized that in working toward the ideal existing technological limitations and feasibility must be considered.

health stds. rulemaking

The American Mining Congress supports the application and enforcement of health standards in underground mines. Since the Secretary has the authority to propose and promulgate health standards, we feel it is unwise to include such standards in the law itself. Standards regarding health should be based upon solid scientific evidence and should be freely and openly debated as should be mandatory safety standards.

conflict with existing regs.

The bill does not amend section 204 of the Coal Act which deals with dust from drilling rock. Apparently, that section would apply to all mines since it does not mention "coal" mines. Under section 301(b)(1) of the bill, the mandatory standards promulgated under the Federal Metal and Nonmetallic Mine Safety Act would remain in effect as standards promulgated under Title I of the bill. Regulations currently in force applicable to noncoal mines cover the "dust" problem (see 30 CFR 57.5, et seq.). To extend section 204 to noncoal mines is unnecessary and would cause confusion.

202(d)

Section 202(d) of the bill amends section 205 of the Coal Act by extending its coverage to all underground mines. Section 205 provides that where the concentration of respirable dust in the (coal) mine atmosphere of any working place contains more than 5 percent quartz, the Secretary of HEW shall prescribe an appropriate dust standard under Title II of the Coal Act for such working place and the Secretary shall apply such formula in carrying out his duties under Title II. Even though this "standard" is containd in the Coal Act, it should not be applied across-the-board to other mines. Health hazards relating to quartz dust as well as many other airborne contaminants are already covered under existing regulations (see 30 CFR 57.5-1).

TITLE III -- RELATIONSHIP TO OCCUPATIONAL SAFETY AND HEALTH PROGRAM

Applicability of the Occupational Safety and Health Act of 1970

301 OSHA not to apply to mines (p.51)

This provision would apparently eliminate the confusion which has been caused by the Labor Department's interpretation of section 4(b)(1) of OSHA, that where another Federal agency has been given authority to prescribe or enforce standards or regulations affecting occupational safety or health, and such agency has not so regulated, or has so regulated but has left a gap in coverage (for example, by failing to promulgate standards relating to a particular fire hazard even though the general topic of fire hazards may have been covered), the OSHA standards would apply.

TITLE IV -- MISCELLANEOUS PROVISIONS

Transfer Matters

301(a) transfer to Labor (p.66)

This provision is somewhat confusing since section 306 of the bill repeals the Federal Metal and Nonmetallic Mine Safety Act, and it is therefore difficult to determine what functions of the Secretary would remain to be transferred under that Act.

The transfer issue, as it would affect metal and nonmetal mining was addressed in our oral testimony before the Subcommittee on March 29, 1977, as follows:

> One of the major effects of the bill would be to transfer responsibility for enforcement of mine health and safety from the Secretary of the Interior to the Secretary of Labor. The Chairman, upon introducing the bill, stated that a major reason for seeking this transfer was a conflict of interests between the responsibility of the Department of the Interior to promote development of the nation's mineral resources on the one hand, and its responsibility to enforce the mine health and safety laws on the other.
>
> We believe this argument about conflicting interests ought to be reexamined. The creation of the Mining Enforcement and Safety Administration (MESA) in July 1973 separated the Interior Department's responsibility to enforce mine health and safety laws from its responsibility to promote mineral development in the United States. The American Mining Congress is convinced that the present organization within the Department of the Interior eliminates the possibility of the conflicts to which the Chairman referred. At the same time, the present administrative organization retains the very constructive relationship which ought to exist between MESA, which is responsible for mine safety enforcement, and the mineral research functions of the Department of the Interior. The enforcement of mine health and safety regulations by MESA is greatly enhanced by the immediate availability of the Bureau of Mines, an invaluable source of consultative and research capability within the same Department. This resource would be lost by the proposed transfer.

301(b) advisory standards mandatory (p.67)

The effect of this provision, as far as metal and nonmetallic mines are concerned, would be to make all of the advisory standards promulgated under the Federal Metal and Nonmetallic Safety Act (P.L. 89-577) mandatory. The drafters apparently misunderstood section 6 of the Federal Metal and Nonmetallic Mine Safety Act, which provides in pertinent part:

Metal Act section6

> ...The Secretary, by a notice published in the Federal Register, shall designate as mandatory those standards promulgated pursuant to subsection (a) of this section which deal with conditions or practices of a kind which could reasonably be expected to cause death or serious physical harm, and the operators of mines to which such standards are applicable shall comply with such mandatory standards...
>
> The Secretary shall publish in the Federal Register health and safety standards which he proposes to promulgate, and he shall specifically identify those standards which he proposes to designate as mandatory standards, and he shall also specifically designate those mandatory standards which have been recommended by an Advisory Committee appointed pursuant to section 7 of this Act...

The conference report on the Federal Metal and Nonmetallic Mine Safety Act 89th Congress, Second Session, Report No. 1921, August 30, 1966, to accompany H.R.8989) states in pertinent part:

> The House bill authorized the Secretary to publish as mandatory standards, standards dealing with conditions or practices 'which could cause death or serious physical harm.' The Senate inserted the words 'reasonable be expected to' after 'could', and the substitute agreed upon adopts the Senate provision, but with additional words, so that the provision will read 'of a kind which could reasonably be expected to cause death or serious physical harm.'
>
> Under the House bill, the promulgation of standards and the designation of mandatory standards were subject to section 4 of the Administrative Procedure Act. The Senate amendment made the entire Administrative Procedure Act applicable to such promulgation and designation, and permitted judicial review of such standards when promulgated, except where recommended by the advisory committee appointed pursuant to section 7 of the Act.

301(b) criteria for mandatory standards

The substitute amendment sets forth a detailed procedure for promulgating standards, which includes provisions for hearings and judicial review in the case of standards designated as mandatory, except where such proposed mandatory standards have been recommended by an advisory committee.

It is obvious that Congress intended that not all standards promulgated under the Metal Act be mandatory. It can be argued that, even so, the time for "advisory" standards has passed and the time has come for all standards to be mandatory. However, it must be remembered that the criteria for designation of mandatory standards under the Metal Act are quite specific. There were no guidelines or limitations on the desingation of advisory standards and therefore many standards were included which had no real application to all mines covered by the Act and many others which would have been worded quite differently had they been mandatory. Many of the advisory standards are "good ideas" but truly should not be law, especially when enforced under a law containing severe sanctions for failure to comply. Prior to promulgation of the so-called advisory standards as mandatory, each standard must be considered on its own mertis as a potential mandatory standard and be subject to full rulemaking procedures. To arbitrarily declare all advisory standards mandatory would be to utterly disregard the Administrative Procedure Act and would be a major setback for public participatory-type rulemaking procedures.

301(b) continuity of regs. and interprestations

Certainly it is necessary to provide for continuity in standards and enforcement in the enactment of any legislation which supersedes existing law. However, the requirement that all interpretations, regulations, and instructions be published in the Federal Register is confusing and unnecessary. The extent of this provision is unclear. Would it require republishing each inspector's manual verbatim? Need all of the regulations in Title 30 of the Code of Federal Regulations be republished? Should new mine safety legislation be enacted, it would be advisable to require that the Department of the Interior publish a full explanation in the Federal Register, in layman's language, of the effect that the legislatin has on compliance with an enforcement of the law and existing regulations. A listing by regulation numbers of those remaining in effect, and a statement to the effect that inspectors' manuals, interpretative manuals and so forth which were in effect prior to enactment of the legislation will remain in effect or how they will be modified should also be required.

In addition to our section-by-section comments on the bill itself, we wish to point out some of its notable omissions and deficiencies.

State Plans

There are no provisions in the bill for state plans. Both the Metal Act (sec. 16) and OSHA (sec. 18) provide for plans under which the states may undertake enforcement of state safety standards both in metal and nonmetal mines and general industry. Both of those laws provide for broad general Federal supervision of the state enforcement programs to insure uniform and vigorous enforcement. In addition, OSHA (sec. 23(g)) provides for grants to the states of up to 50% of the cost of administering their state plan. It seems strange at a time when complaints are heard almost daily from the legislative branch, the executive branch, the states, and industry about the burgeoning Federal bureaucracy and the impersonal nature of centralized authority under the Federal Government in Washington, that the Congress should turn a deaf ear to an opportunity to allow state governments to undertake responsiblity for administering a law ideally suited to that purpose. Many states under OSHA and under the Metal Mines Act have assumed this responsiblity, even while having to provide most of their own funding, and have performed admirably.

We urge Congress to recognize the desirability of the continuation and expansion of state plan programs regarding metal and nonmetal mine safety.

Research and Training

Another major shortcoming of the bill is it does not provide adequately for research to develop new and improved methods of mining, nor does it provide adequately for training individuals to work in the mineral extractive industries. The bill does provide in section 303 amendments to the Coal Act which would make sections 501 and 502 applicable to all minerals. Section 501 of the Coal Act is entitled "Research" and directs the Secretary to conduct studies, research experiments, and demonstrations, and to do a host of other things which would improve health and safety in mines. The areas provided for are, of course, important and laudable. However, there is a notable lack of funding or direction to the Secretary to conduct basic research into new and improved mining techniques which would reduce exposure of persons working in mines. This could include, for example, remote control mining machines, new methods of fracturing rock to eliminate or reduce the use of explosives in mines, development of electronic devices to measure rock movement for use in roof control, and practical devices for automatic measurement and monitoring of air quality.

Research and Training

Section 502 of the Coal Act is entitled "Training and Education" and directs the Secretary to expand programs for the education and training of operators and miners in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in mines, and means for detecting methane and other explosive gases accurately. Likewise, these are laudable goals and are extremely important. However, the training and education that is required today far exceeds the above listing. Funding is required to sponsor such training programs. At a time when unemployment is high and the welfare rolls are swollen, many mine operators are experiencing difficulty in finding qualified help and skilled miners. The Federal Government could serve a very useful and important role in expanding the Nation's mineral extractive industries while lessening dependence on foreign sources of minerals and fuels by cooperating with industry in educating a "pool" of formerly unemployed individuals to be skilled miners and other tradesmen in the mineral extractive industries. In mining, the skill and training of the workman goes hand in hand with his safety on the job. Many individual operators do maintain training programs but do not have the resources to provide training on the massive scale necessary

We urge the Congress to provide direction and funding in any new legislation concerning mine health and safety for such training programs.

Mr. MINER. The American Mining Congress is a national association of U.S. companies that produce most of the Nation's metals, coal and industrial and agricultural minerals, and as such, has a very real interest in legislation affecting the safety and health of the employees of its members.

We felt it would be appropriate if I opened our testimony by examining both the existing law 89–577, and future impact of S. 717 on existing safety and health programs.

It might be beneficial, Mr. Chairman, if each of us were to give a brief synopsis of our experience. We will cut that down. But, briefly, I have had 30 years in the industry and worked as a miner in all phases of labor, et cetera. As a member of management I have held positions as shift boss, foreman, superintendent, manager, and presently a corporate officer.

I have also held engineering assignments and I am a graduate mining engineer. I would also like to note I was appointed to the first Metal and Nonmetallic Mine Safety Advisory Committee to the Secretary of the Interior in 1967, and I am the only individual who has served on each committee since inception.

It is my observation that the Sunshine Mine fire of 1972 is often presented as justification for a new metal and nonmetallic mine safety law.

When an airline tragedy occurs, Congress does not propose new legislation which would transfer the Federal Aviation Administration to another executive department. Rather, a thorough investigation is made into the causes of such occurrence, and new rules and regulations are promulgated to attempt to prevent future occurrences.

Mr. Swent will describe in his testimony how compliance with new rules and regulations promulgated pursuant to the existing Metal and Nonmetallic Mine Safety Act averted a disaster of greater potential than the Sunshine fire.

Gentlemen, I would now like to comment that those of us in the metal and nonmetallic mining industry watched and listened to both Houses of Congress last year as mine safety legislation was considered in subcommittees, full committees and on the floor of the House of Representatives and the Senate.

We were dismayed and frustrated to observe that the central issue in both Houses seemed to be the transfer of the Mining Enforcement and Safety Administration from the Department of the Interior to the Department of Labor. The American Mining Congress testified in opposition to that transfer; however, we did not then nor do we now consider that to be our main concern.

Much of the testimony last year seemed to concentrate on the Scotia disaster and, of course, Scotia was a coal mine. I think this is real important. We have to feel that because of the understandable concern over Scotia the great differences between coal and noncoal mining was somehow blurred in the consideration of last year's legislation. As a result, it seems to us that both House and Senate measures last year, and indeed this year as well, impact unwisely and unrealistically on metal and nonmetallic mining.

It appears to us in noncoal mining that we have communicated poorly on S. 717 or S. 717 would not have been introduced.

Mr. Chairman, I now would like to briefly outline what is now provided in the Federal Metal and Nonmetallic Mine Safety Act.

In section 4, that the Secretary of the Interior is authorized to inspect all noncoal mines in the United States on a schedule he deems appropriate, including mandatory inspection of underground mines at least annually. This enables him to utilize his inspection force as efficiently as possible in ensuring compliance with the standards and to concentrate on problem areas.

In section 6, that the Secretary develop, in consultation with an advisory committee, mandatory health and safety standards for the protection of life, the promotion of health and safety and the prevention of accidents in mines which are subject to the act.

In section 7, that the advisory committee members must include representatives qualified by experience and affiliation to present the viewpoint of operators, miners and State mine agencies. This mandate assures that the work-product of the committee reflects the expertise of these combined disciplines.

In section 8, that an inspector may order the immediate withdrawal of persons from areas subject to imminent danger, issue notices of violation for noncompliance with standards, and issue orders for withdrawal for failure to abate violations within the time permitted in the original notice of violation.

In section 13, that the Secretary is provided with broad authority in requiring reporting of accidents, injuries and occupational diseases and related data.

In section 14, that the Secretary may seek injunctive relief for noncompliance with orders, interfering with inspectors, refusing to permit inspections, or refusing to file reports required by the Secretary. Section 14 further provides criminal penalties for failing to comply with imminent danger orders.

In section 15, that "the Secretary shall develop extended programs for the education and training of employers and employees in the recognition, avoidance and prevention of accidents or unsafe or unhealthful working conditions in the mines which are subject to this act."

In section 17, that to the maximum extent feasible mine inspectors shall be selected on the basis of practical mining experience.

In short, Mr. Chairman, the existing act is a comprehensive law which provides broad authority for the Secretary to take virtually whatever actions he deems advisable to regulate mine health and safety throughout the Nation. We think the existing law has been unjustifiably criticized and has been too often the victim of comparisons with subsequent congressional actions, rather than with the record established by the Bureau of Mines, and now MESA, as well as by the metal and nonmetallic mining industry itself since 1966. In this regard, we think it is appropriate to point out the significant decrease in accidents in the metal and nonmetallic mining industry since 1972.

These statistics complied by MESA are attached to the end of my testimony.

The metal and nonmetallic mining industry is proud of the gains that have been made in improving the health and safety of the workers in our industry. As can readily be seen, significant advances have been made, and we feel that enactment of S. 717 would be detrimental to the continuing advancement.

[The material referred to follows:]

Metal/Nonmetal disabling injuries and injury-frequency rates 1972-1976

	Disabling injuries			Frequency rates		
	Fatal	Nonfatal	Total	Fatal	Nonfatal	Total
1972--------	234	9,596	9,830	0.57	23.18	23.75
1973--------	175	8,273	8,448	.40	18.69	19.09
1974--------	158	8,916	9,074	.34	19.06	19.40
1975--------	123	8,438	8,561	.26	17.81	18.07
1976 1/-----	113	7,443	7,556	.25	15.02	15.27

1/ Preliminary data.

Coal disabling injuries and injury-frequency rates 1972-1976

	Disabling injuries			Frequency rates		
	Fatal	Nonfatal	Total	Fatal	Nonfatal	Total
1972--------	156	12,329	12,485	0.58	46.08	46.66
1973--------	132	11,220	11,352	.48	40.41	40.89
1974--------	133	8,545	8,678	.45	28.79	29.24
1975--------	155	11,107	11,262	.42	30.17	30.59
1976 1/-----	141	13,944	14,085	.34	36.07	36.41

1/ Preliminary data.

Mr. MINER. Thank you. I would now like to call on Mr. Casteel.

Mr. CASTEEL. Mr. Chairman, my name is Laurence W. Casteel and I am division manager of St. Joe Minerals Corp., in Missouri. I am a mining engineer by profession with 39 years of experience, starting as a driller underground.

One of our biggest objections to S. 717 is that it would combine all mining, both coal and noncoal, under a single legislative umbrella. It has for many years been recognized that although coal and noncoal mining have one basic similarity, that is, extraction of minerals from the Earth, the similarity just about ends there.

Generally speaking, coal deposits are geologically very similar, and usually occur as flat-horizontal deposits. The engineering involved in coal mining is relatively similar from seam to seam. These factors add up to the fact that the health and safety concerns involved with coal mining are similar in all underground coal mines. They are likewise similar in surface coal mines.

In noncoal mining, however, nearly every mineable deposit of valuable minerals is unique, requiring unique engineering, and giving rise to unique health and safety concerns. This is not to say that each noncoal mine requires custom designed health and safety standards, but it does point out the need for flexibility in the formulation and enforcement of standards.

As Congressman Morris Udall, chairman of the House Interior and Insular Affairs Committee, stated in a speech discussing surface mining legislation on January 25 of this year:

> I believe, that geologic circumstances of hard rock mining are considerably different than fossil fuel extraction. We started our 4 years ago to write a surface mining bill that would cover all minerals, and we soon discovered that the problems were quite different and that you can't include the same kind of provisions for both kinds of mining.

We agree with Mr. Udall's rationale as it applies to surface mining. These differences are even more pronounced in mine health and safety, particularly in underground mines. Lumping all mining under one health and safety law would undoubtedly promote an effort to gain uniformity among standards and enforcement mechanisms, an effort certainly not justifiable on any safety or health basis. Having one law would, of course, require the repealing of the existing Metal Act, a move we feel is both unjustified and unwise.

Compliance with standards and abatement of violations has not been a major problem in the metal and nonmetal mining industry because of the cooperative relationship which mine operators and, more importantly, our safety personnel have developed with our employees and with MESA. We are proud of this cooperative relationship and very pleased that all of us are able to work together for our common goal of improving health and safety.

Cooperation in recognizing hazards and assistance in learning how to comply with standards and abate violations is necessary to continued progress. S. 717 would not enhance the cooperative effort now ongoing to improve safety and health conditions in metal and nonmetal mines. Regrettably, it would have the wholly unintended result of inhibiting that effort.

Under the existing law, if an operator is having difficulty with a mining condition, he will quite often request the advice of a MESA inspector as to the best method of correcting the problem. The assist-

ance of these inspectors has truly been an asset in achieving the impressive improvements in health and safety statistics.

However, enactment of S. 717 with its mandatory penalties, for all violations, will certainly make any operator think twice before he intentionally points out a troublesome condition. The effect then would be to replace the cooperative relationship with a completely unwanted adversary relationship. I know that this is not the intent of this measure, but quite frankly, it will be the effect.

Several provisions in S. 717 has the effect of locking operators and their employees into an adversary relationship with each other. To illustrate, we seriously question the provision section 104(f)(1) under which a miner may request an inspection and report alleged imminent danger violations without first notifying the operator.

With the purpose of the law to insure compliance and eliminate dangerous conditions, an employee should be encouraged, if not required to report these conditions first to someone in a position to take immediate corrective actions, namely the operator. We hope you will take a very careful look at the possibilities for confusion and inequity in these provisions.

Thank you very much.

Mr. SWENT. My name is Langan Swent. My father was a mining engineer and from the time I was 6 months old I was raised in mining camps. I spent 6 years in universities studying engineering, mining, and geology, working for mining companies in a variety of jobs during summer vacations. The only period in my life when I was not intimately involved with mining was during World War II, when I spent 4 years on active duty in the U.S. Naval Reserve.

In early 1946, I began my formal mining career as an underground laborer at the Homestake Mine in South Dakota. After that I worked as a day's pay and contract miner, and as a shaft man. These were very valuable years of experience for me. At present I am vice president of engineering for Homestake Mining Co. In this job I travel a great deal and visit all our operations frequently.

During the 94th Congress we testified in opposition to the need for a new Federal law. We are still of that conviction. As both Mr. Miner and Mr. Casteel stated, there are many significant differences between coal and noncoal mining. Coal deposits are geologically very similar, while in noncoal mining nearly every recoverable deposit of valuable minerals is unique, requiring unique engineering, and giving rise to unique health and safety concerns.

We are concerned about the provisions in S. 717 relating to inspections and investigations. These concerns will be set out in detail in a section-by-section analysis we are supplying for your record. However, let me make just a couple of observations about this general subject here.

It is very important to have trained and competent inspectors. The present law says that they should have practical mining experience, and that should be a must requirement in any law. This will not be the case under S. 717, especially with HEW personnel who are authorized to make inspections and investigations as safety inspectors.

It is reasonable for us to expect them to understand the mechanics and the dangers inherent in the mining industry. We have had experience with representatives from the Department of Health, Education, and Welfare visiting our mines and plants.

Although I cannot attest to the professional ability in their laboratories and offices, I can attest to the fact that they are not experienced miners, yet S. 717 would empower them with the same authority rightfully granted to experienced mine safety inspectors, that is, to enter without delay any mine subject to this act and to inspect and investigate any mine and all pertinent conditions, structures, machines, apparatus, devices, equipment, records, and materials therein.

Homestake Mining Co., on May 9, 1975, had a severe mine fire in its underground gold mines in Lead, South Dakota. The fine manner in which the emergency was handled is a result of the personal training and dedication of all the employees involved and to the adoption and enforcement of emergency situation regultaions by MESA.

The Homestake mine fire had all of the elements for disaster that the 1972 Sunshine mine fire had, and potential for even greater loss of life due to the much larger number of people underground at the time the fire occurred. It took 2 weeks of around-the-clock to clear all the carbon monoxide from the mine and to put the fire out.

On the day of the fire 610 employees were underground scattered in locations between the 2,150-foot level and the 8,000-foot level. When the fire was discovered, glass tubes containing ethyl mercaptan were broken in the ventilation intakes and in the compressed air lines. Ethyl mercaptan is a volatile, foul smelling liquid whose odor spreads very quickly and is very distinctive. Employees are trained to recognize its distinctive odor as a fire alarm and evacuation order, and to leave their places of work immediately and proceed to their designated evacuation assembly points. There they meet their shift bosses who take charge of the evacuation of all the employees under their supervision.

The evacuation went smoothly without loss of life or injuries. The reason things went so well was that several evacuations had been practiced in the previous 2 years in accordance with mandatory standards promulgated by MESA in early 1973. The ethyl mercaptan warning system had been practiced and refined. All employees were instructed in the use of and were equipped with, self-rescuers for going through carbon monoxide contaminated air. All employees knew where to go for evacuation. The specially trained mine rescue teams performed their duties excellently.

Thus, a hard rock mine disaster of proportions potentially far worse than the 1972 Sunshine mine fire was averted by the company and its employees adhering to the MESA regulations.

My point here is to indicate that after the Sunshine disaster in 1972, the Secretary with assistance from the advisory committee, promulgated regulations which resulted in what I consider to be well-organized and successful mine evacuation. No new legislation was passed to make this a successful evacuation, nor were inspections increased.

What did happen was that we—all of us, the Secretary, the members of the Metal and Nonmetallic Mine Safety Advisory Committee, MESA, and the industry learned and moved through the rulemaking procedures of the existing act to provide the proper safeguards, so that, to the best of our ability we could prevent another disaster.

I would like to make one further comment on our potential disaster. It is my opinion that had MESA inspectors attempted to supervise this rescue and fire fighting operation, as authorized under section 104(i) of S. 717, the end result would have been catastrophic. Only management personnel at the mine, intimately familiar with the con-

ditions, ventilation, and the required to exacuate could have pulled this evacuation off without serious conseqences.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. McCabe?

Mr. MCCABE. Mr. Chairman, my name is Edward A. McCabe. I am a partner in the law firm of Hamel, Park, McCabe & Saunders. I serve as chairman of the Industrial Relations Committee of the American Mining Congress.

You will see from the comments we addressed here this morning, Mr. Chairman, that we are talking about those provisions in S. 717 which relate to the Federal Metal and Nonmetallic Mine Safety Act. As you have heard my colleagues on the panel say, the American Mining Congress opposes the enactment of S. 717.

Included among our reasons for opposing it are substantial questions of due process. These will be set out in detail in the section-by-section analysis which we will submit to the committee.

To illustrate, however, let me point to section 102(g). It states that no objection to a standard shall be considered by the court if it wasn't advanced before the Secretary—unless it can be shown that "extraordinary circumstances" made that impossible.

This section apparently would mean that no one could challenge the validity of a final standards unless he had objected to or at least commented on it when it was proposed. We regard this as an infringement on due process.

And, Mr. Chairman, this provision we believe can lead to needless litigation. At a minimum, it will prompt the formality of comments and objections merely to preserve the standing necessary to challenge the validity of final standards. This will cause unproductive and unnecessary delays in the promulgation procedure.

Further, in our view, rulemaking should follow a number of essential procedural safeguard, which we do not find provided in S. 717. We are troubled by the provisions in the bill for citations and orders. An inspector may issue a citation where he "believes" an operator has violated a safety or health standard. This can lead to unnecessary confusion.

Inspectors should make findings that violations have in fact occurred. They should not issue citations on the basis of mere belief. Also, the bill mandates that the inspector issue a citation for each and every violation. By way of contrast, OSHA permits the issuance of a notice in lieu of a citation, in de minimus violations deemed to have no direct or immediate relationship to safety or health.

All standards should, of course, be complied with. However, many have no immediate, direct or serious bearing on safety or health. No useful health or safety purpose is served by requiring in every instance, the issuance of a citation which under S. 717, can ultimately result in a penalty proceeding.

S. 717 provides an inspector with authority to order workers withdrawn from a portion or all of a mine where he determines an imminent danger exists. It gives him authority to assume control of rescue operations in a mine, and to issue such orders as he deems appropriate in the event of an accident occurring in a mine.

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It further provides that the operator is liable to pay his employees during any closure ordered by an inspector—regardless of the outcome of any subsequent court review of the inspector's closure order.

We hope you will take another look at this area of the bill. It seems to us these provisions raise serious, and unnecessary questions of taking private property without just compensation.

To insure compliance with any regulatory scheme, a means of enforcement must be devised and implemented. The past several years have seen a great increase in the use of civil penalties as a device to insure compliance with Federal administrative regulations.

Properly utilized, the imposition of, or threat of civil penalties can be an effective enforcement tool. However, utilization of such a penalty system on a massive scale is not a simple task, as has been seen under the provisions of the Coal Mine Health and Safety Act of 1969.

The real advantage of a civil penalties system is its flexibility. It can deal with separate situations in a speedy and equitable manner, without creating an undue burden on our judicial system. These advantages, however, are quickly lost if the system prescribed by the statute is harsh, or if the administering agency fails to provide procedural safeguards to insure that cases are handled fairly.

If the penalties are harsh, or enforcement not evenhanded, the regulatory scheme will fail because the administrative and judicial systems are quickly overburdened with appeals. This would have a very negative impact on the stated objective of this law since it would involve large numbers of safety proceedings.

It would remove safety specialists from the mines—where they are needed the most—and tie them up in lengthy litigation procedures, with the result that they may make no net contribution at all to health or safety.

On balance, the penalty provisions of S. 717 seem to us to be more punitive than remedial and we regard this as a mistake not justified by any recent experience in metal and nonmetallic mines.

The existing Metal and Nonmetallic Act, which contains no penalty provisions, does allow closure of a mine, or the affected portion of a mine, where an imminent danger exists. Even more effective as an enforcement tool is the authority in the present act to close a mine or portion of a mine for failure to abate a violation within the time allowed. Ordering withdrawal in this fashion has provided strong stimulus to compliance, while avoiding the redtape involved in the administration of a penalty system.

Summarizing our views on the enforcement provisions of S. 717, we feel they go far beyond what is necessary to effect compliance—beyond what experience under the present law has shown to be a useful and constructive route to improved health and safety in metal and nonmetallic mines. As we said earlier, the section-by-section comments we submit later on will set out all these observations in much greater depth and detail.

Mr. Chairman, this concludes our formal presentation.

The CHAIRMAN. Thank you very much, Mr. McCabe.

Let me start with the point you made, Mr. McCabe, dealing with rulemaking and failure to make objection as a limitation on the opportunity to register those objection before a court. You say that this section apparently would mean no one could challenge the validity

of a final standard unless he had objected to or at least commented on it when it was proposed.

That is not the way the legislation is drafted. The section says:

> No objection that has not been urged before the Secretary shall be considered by the court unless the failure or neglect to urge objection shall be excused because of extraordinary circumstances.

First of all, you put it in terms of a personal opportunity. You say that no person can do it unless he raised it below. What the bill says is that this objection cannot be made by anybody, or could not be made by anybody if this area of objection has not been made below, in rulemaking. Then it cannot be raised in court unless the individual urging it shows unusual circumstances.

I would imagine that should be liberally construed because it is impossible to imagine all the circumstances and eventualities, and there should be an opportunity to raise an objection if something new has happened so that it obviously could not have been raised below.

But, the prohibition doesn't fix on the individual. It is to the objection to look at the record to see whether this kind of objection has been raised.

Mr. McCabe. I see what you are saying, Mr. Chairman. It causes us difficulty though because it is the individual or company that would like to advance an objection in court, and unless that objection were advanced in the preliminary proceedings, at least as we read the bill in its present form, there would be no way to bring that objection before the court, unless you could show unusual or extraordinary circumstances made that impossible at the early stages.

The central difficulty I suspect in that provision would be that a proposed regulation might be published today which, as I would read it for my company might not seem to have a great impact on my operations and so, I might determine at that juncture there would be no reason to come in to the preliminary stages.

The hearing officers would get information from others. The final regulation might be very different from the one I first read about and what we would fear—and you seem to be saying things now, Mr. Chairman, that would allay that feat and I hope they would——

The Chairman. I will tell you how I arrived at this. I read your statement last night and when I saw it I said we can't mean that because I agree with your statement. If we said that, we are wrong. I went back and read it again and thought it over. It should be clarified and there should be a liberal opportunity.

Did you have anything further?

Mr. McCabe. I was reminded here that the draft of the bill simply elaborates the point that the draft does use the term, "any person." But I think the exchange here that we have had maybe addresses the point adequately. You see our concern?

The Chairman. I sure do.

Mr. McCabe. And you have indicated an awareness of it. We appreciate that.

The Chairman. I don't mind saying I didn't see it until I read your statement. It happened about midnight or a little later, but that is my fault. I am not blaming you for not reading your statement until late last night. "Annie" got in the way last night, the play.

It struck me, and I agree with you. Then I went back to see whether we could be wrong. I don't think we are, but we will find a way to make this quite clear.

Mr. McCabe. This is a different circumstances from the one we sometimes think about, about a fellow who doesn't exhaust his administrative remedies. But I believe we do have a good focus here and I won't prolong the discussion.

The Chairman. Another due process concern Mr. McCabe, which you raise centers on the authority that is developed here for an investigator or inspector to issue an imminent danger closure order or to assume control of rescue operations in cases of mining accidents. This is new to the metal and nonmetallic law, but this has been in the coal mine law.

Mr. Miner. I'm confused. You say, "We agree it is not in this law." Now you say it is?

The Chairman. I said these provisions have been in the Coal Act. Do you say no? What part of it has not been in coal mining?

Mr. Long. The director of MESA cannot take over the rescue and recovery operation.

The Chairman. No?

Mr. Long. He can't go over and take over complete control. He has to do it in cooperation.

The Chairman. I agree, as practical matter. But isn't he in charge and, as a practical matter, he uses personnel of the operator?

Mr. Long. And the State in cooperation.

The Chairman. There is cooperation but the director can be in charge.

Mr. Long. With the cooperation.

The Chairman. Yes, but this is still something that is new to metal and nonmetal, and you worry about due process. This question has not been raised under the Coal Mine Act. I just wonder why there should be a new fear.

Mr. McCabe. Two things occur to me, to sum it up. Mr. Swent, in his prepared statement reviewed the experience under the Metal and Nonmetallic Act in the Homestake fire where he says, from his professional judgment it would have been a chaotic condition had anybody other than those company personnel deeply familiar with an involved mining site taking over the rescue operations.

To put somebody new in can raise questions of who is liable for what may follow. The other point that is of greater concern is the situation wherein this bill woud permit an inspector to close a mine and subject the employer to the requirement that he pay employees for their idle time and then not have that mandatory, even though the inspctor's determination is overturned in a later court review of that very episode.

Am I making it clear?

The Chairman. Yes.

First of all, on this payment situation, you have an opportunity to withhold payment and get a hearing by forcing a complaint by the miners. A hearing can be had on that. Then you can further defer payment until it is determined payment should be made later on in court. You present the situation where there is a reversal of the inspector's initial decision on closure; is that right? Then, what about the money you have paid? That is the question.

Mr. McCabe. Essentially, yes.

The Chairman. I think there is something you put your finger on, a situation that will have to be worked on. I appreciate it. Unfortunately, this is a very valuable interest for us and another rollcall is on, so I can't delay. I just wanted to point out something Senator Schweiker raised earlier and that was the comparison of rate of fatalities in coal mining and metal and nonmetal within the last few years. He pointed to figures that showed the frequency rate is higher within the last 3 years in underground.

Mr. Miner. Senator, we heard that too and we question where they came from. We picked these figures up right from MESA just before we came into the meeting. I don't know whether our figures are right, but I am wondering why the difference.

The Chairman. I think we had better check these out. Are you submitting figures?

Mr. Swent. We have a table. There was a statement attached to Mr. Miner's testimony.

Mr. Miner. I think you would be interested in seeing these. If it meets with your pleasure we would be glad to wait if you have to take a rollcall.

The Chairman. After that then my turn comes on the floor, so I am knocked out either way.

Mr. Miner. But I think it is an area you should definitely check. We assumed we had the right figures and were quite surprised when we heard the others related this morning.

The Chairman. We will check this out.

Mr. Miner. Our point is we felt you people probably just haven't had the opportunity to recognize the difference between coal and metal. What we are basically saying is under our act we think, now that the mechanism and the troops are together that we have been making real progress and the record shows the coal record isn't as good.

We thought we would like to have you take a real serious look at the noncoal and metal end and look to see if you haven't got a law here that isn't doing the job. That is the point we were trying to make.

The Chairman. We will analyze that. One final thing. The training program we outlined in our legislation. From the coal industry we got a report that some of the major operators are pretty close to that training program and, as a matter of fact, it is part of the United Mine Workers contract.

I am just wondering how it is in metal and nonmetal.

Mr. Miner. I would say there is quite a bit of training that does take place now. By making it mandatory and enforcing it, you run into this problem. There is always some training before you put the men underground, usually a day of orientation and safety, and point out the bad things that can happen. Then, after the man is pretty well established, maybe a week or something like that, a determination is made as to where is he going to fit in the organization.

Then, usually the man is contacted and some kind of provision made to give him further training. But, in the hard rock industry we seem to still have this turnover. That point you have provided in your bill means you train a man, he comes and works for you for two or three days and leaves you. It would be kind of a gravy train type deal is what would come out of this. This is what we have concern

with. But, the training we love. We think it is needed and we want to do more of it.

The CHAIRMAN. I could see a situation here where that length of period of training might be unnecessary in view of certain things. I don't know how that could be adjusted. Certainly, we will think about it to see if it can't be adjusted.

Mr. MINER. Like I say, we are all for training. We just prefer not to have it mandatory from that aspect.

The CHAIRMAN. We feel something is going to have to be mandatory. There are a lot of operators we understand, who are not as conscientious about this.

Mr. MINER. I've just got to comment. I keep hearing that and I don't have anything to say about the coal, but on the hard rock end, I really think generally you have a different set of conditions. I don't think we have too many bad people.

The CHAIRMAN. Thank you very much.

[Whereupon, at 2:15 p.m. the subcommittee recessed, to reconvene at 10 a.m., Thursday, March 31, 1977.]

FEDERAL MINE SAFETY AND HEALTH AMENDMENTS ACT OF 1977

THURSDAY, MARCH 31, 1977

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m. in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams and Javits.

OPENING STATEMENT OF SENATOR WILLIAMS

The CHAIRMAN. We will come to order and we will begin our second day's hearing on S. 717, the Federal Mine Safety and Health Amendments Act of 1977. This bill is the response to what I and 25 other Senators see as an inadequate safety law for our Nation's hard-rock miners, and as inadequate administration and enforcement of our entire mine safety and health program.

This committee has the responsibility for monitoring the enforcement of our mine safety program. We have not taken this responsibility lightly. We have been and are gravely concerned about the repeated disasters in our mines which have brought death to literally hundreds of miners and their families. We have investigated those tragedies, and we have learned much about the weakness of our laws.

We have learned that standard making under both the Metal and Nonmetallic Mine Safety Act and the Coal Mine Health and Safety Act has been too slow and ponderous to respond to demonstrated needs. We have learned that inspections are often inadequate.

We have learned that health hazards have been poorly dealt with. We have learned that the agencies of the Government which are responsible for enforcement of these laws too often take the narrow view of their responsibilities.

We have learned that the system of civil penalties under the Coal Act holds great promise for securing the desired result—reducing the number of deaths and injuries in our mines. But we have also learned that that civil penalty system is not reaching its full potential.

Penalties must be promptly assessed in an amount which will encourage operators to comply with the act.

S. 717 was drafted with a full understanding of our current laws and their witnesses and with the knowledge that the time for improvements has arrived.

For just a surely as miners are killed in large numbers in mining disasters, they also are killed, quietly, one or two at a time. And the toll mounts—222 miners killed and 18,442 suffered disabling injuries in 1976 alone.

We must provide meaningful protections for the men and women who give this vast Nation its energy and minerals. These hearings will help us develop even a fuller understanding of the problem. Our witnesses today have come to help us in that task, and on behalf of the committee, I welcome them and their assistance.

We all look forward to the day when our Nation's mines will be truly safe and healthful, and when disasters and tragedies, such as we have all too frequently known, will be a thing of the past.

Without further ado, I would like to welcome the panel of the National Crushed Stone Association and the Gypsum Association spread out across as far as the eye can see. We will proceed with your presentation. Who is chairman? Mr. Crolius, are you chairman of this?

STATEMENT OF NEWELL T. CROLIUS, DIRECTOR, LOSS AND ACCIDENT PREVENTION SERVICES, HARRY T. CAMPBELL SONS' CO., TOWSON, MD.; MILT DURHAM, SAFETY ADMINISTRATOR, MARTIN MARIETTA CORP.; CARL METZGAR, GROUP SAFETY MANAGER, LONE STAR INDUSTRIES, GREENWICH, CONN.; JIM CHRISTIE, MANAGER, CORPORATE SAFETY ADMINISTRATION, VULCAN MATERIALS CO., BIRMINGHAM, ALA.; ROBERT C. HOLLENBACH, VICE PRESIDENT OF GOVERNMENTAL AND PUBLIC AFFAIRS, NCSA, A PANEL FROM THE NATIONAL CRUSHED STONE ASSOCIATION

Mr. CROLIUS. I believe I am the one.

Mr. Chairman and the staff, your invitation to the National Crushed Stone Association to give testimony relative to S. 717 is greatly appreciated.

The testimony has been given to you separately, and, in the interests of time, I will attempt as best I can to abbreviate. There are, however, several points we do want to stress. I will try to go quickly.

My name is Newell T. Crolius, director of Loss and Accident Prevention Services for the Harry T. Campbell Sons' Co. in Towson, Md. We have two major limestone quarries, two smaller quarries, and some major sand and gravel operations and an underground calcite mining operation.

I am chairman of the National Crushed Stone Association Safety and Health Committee and I have been associated with safety and health and insurance for approximately 20 years both in industry and in the insurance business with the American Mutual Liability Insurance Co. and the Loss Control Management Corp. Since 1971, I have been associated with Harry T. Campbell Sons' Co.

I am president of the Maryland Self-Insurer's and Employees Compensation Association and have been associated with the Baltimore City Noise Control Advisory Board and with various other industry and civil activities through the course of my years in this business.

As a witness for NCSA, I represent the crushed stone producers who are members producing approximately 70 to 75 percent of the crushed stone used in construction aggregates annually in the United States and operate out of approximately 800 quarries.

With me this morning are our associates, also dedicated to the cause of safety for many, many years. On my immediate left, Mr. James Christie, who is manager of Corporate Safety Administration of Vulcan Materials in Birmingham, Ala. Mr. Christie has over 25 years in industrial loss prevention, a majority of which has been in explosives and mining. He is a certified safety professional and a professional member of the American Society of Safety Engineers and a member of the executive committee of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council. He is vice chairman of our safety and health committee.

Next to Mr. Christie is Mr. Milt Durham, again, with over 25 years of work in safety is associated with the Martin Marietta Corp. He is also a certified safety professional, a member of the American Society of Safety Engineers and a member of the executive committee of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council, and has other important activities in the safety community and is a past chairman of our health and safety committee.

Next to him is Carl Metzgar, who is group safety manager of Lone Star Industries of Greenwich, Conn. Mr. Metzgar has over 9 years experience in safety, and is certified also as a safety professional. He is a member of the Industrial Conference of the National Safety Council, the International Advisory Board of the Loss Control Management College, the American National Standards Institute B–20 Conveyor Safety Committee and is an associate in risk management. He is also a past chairman of our safety and health committee.

Last, but not least, Mr. Robert Hollenbach is the vice president of the National Crushed Stone Association, governmental affairs, and staff liaison of the safety and health committee. He is also a member of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council.

I would like to preface my remarks today by pointing out that the weight of economic costs of accidents has risen so dramatically in the last 10 years that any responsibile management is bound to be far more concerned than ever before with the safety and health of the workers.

For example, workman's compensation premiums in the last 7 years have risen from approximately $1.5 billion to over $6 billion in 1975. That is due to continuing increases in medcal expenses and to mandated legislated increases in benefits and, of course, since the National Commission on State Workman's Compensation laws brought forth its report in response to your Williams-Steiger bill of 1970, that commission mandated a number of recommendations which the States have been following in most cases, and those too have increased benefits measurably and have increased costs.

The CHAIRMAN. Do you mean mandated or recommended?

Mr. CROLIUS. It was accepted as a mandate in most cases. Basically, it is a fact and it has always been a fact that accidents are simply bad, bad business from any moral point of view or economic standpoint.

The safety and health of our quarry workers is of tremendous importance to us. Most quarries are small operations employing an average of 12 to 20 men.

The quarry has an average life of 80 years and our quarrymen many times have their fathers, sons, nephews, and cousins working with them. We care about their safety and their health. We have management labor teams consisting of fathers, sons, cousins, and some are supervisors and their relatives are laborers of various skill levels working with them.

The National Crushed Stone Association's concern for safety and health of quarry personnel has a long history. For almost 60 years, the first organizational meeting of the NCSA, in 1918, the question of investigation of safety devices was one of the principal agenda items. Since that first meeting in Chicago, NCSA has conducted an uninterrupted and strong safety program for those working in the crushed stone industry. The list is long and impressive of participation in other associations that are concerned with safety as well as developing their own programs not only in safety per se, but also in air pollution and water pollution, noise control and mine management level supervisory courses which assist the supervisory levels in being better managers and safer managers.

In the middle 1960's as a result of this long-term interest, NCSA played a very important role in the congressional consideration of the Federal mine safety legislation, which became the Federal Metal and Nonmetallic Mine Safety Act of 1966. Today this bill and other mine safety and health bills proposed in recent past sessions of Congress are the common thread which causes our industry great concern.

The general public and the executive and legislative branches of Government do not readily understand that quarry operations are significantly different from other types of mining.

There will always be vast differences between the two—coal and metal and nonmetal—differences in operation, differences in the hazards and considerably emphasized in the differences between coal and nonmetal and quarries. Rock quarries are different and unique from coal mines. The operation methods, type of personnel, the geological qualities of the extracted material, the equipment used, the environmental hazards and the possible occupational health disorders are all different from coal mining.

Even the few underground quarries are remarkably different from underground coal mines. Shafts are horizontal in stone mines versus the deep vertical shafts in coal. Natural ventilation through the huge 40-foot high openings provide fresh air to underground quarry workers. Explosive gas and dust are not present. The stability of the geological formation virtually rules out the possibility of roof fall. Forty-foot solid rock pillars hold up 40-foot to 60-foot ceilings in giant underground rooms.

I have some photographs should you care to see them, and I would add also that we cordially invite you or your staff to come visit representative groups of both surface and underground operations within the Maryland and Virginia areas. I would be very glad to show them to you. I have reason to believe that you would see a dramatic difference between them and coal.

Our second major area of concern is the proposal to transfer the metal and nonmetal from MESA to the Department of Labor. We

believe that this transfer from the Department of the Interior would prove counterproductive to the common safety and health improvement goal of the Congress, the administration, the mining industry, and labor.

From the time the Federal Metal and Nonmetallic Act was enacted in 1966, the agency charged with the enforcement of this provision was seriously hampered by one factor. The same factor also continues to hamper the efficiency of OSHA.

That restraining handicapping factor is that Congress has not seen fit to appropriate the necessary funds in sufficient quantity to allow either agency to engage in adequate occupational health research, to train and hire the number of enforcement personnel adequate to the task, to assist the unions and industry in providing adequate safety and health education, and to perform other important related tasks.

Despite this critical and basic disadvantage, soon after establishment by the Secretary of Interior in 1973 of MESA, the Mining Enforcement and Safety Administration, it found administrative and technical support from other bureaus within the Department of Interior which understood mining, its special characteristics and who were interested in safety and health.

Since that establishment of MESA as a separate organization, no major tragedy has occurred in metal and nonmetallic mining in the United States. Credit for this, we believe, is due to the dedicated efforts of MESA and the cooperative assistance MESA has given both industry and labor. As a result, safety and health enforcement under MESA has been better than for any other industrial group.

Preliminary accident figures of the eight principal industrial groups are compiled annually by the National Safety Council. Their preliminary figures for 1976, scheduled for publication in the next month's issue of the Safety News magazine, show that in comparing the 10-year changes of the accidental death rate of workers in these eight principal industrial groups, the accidental death rate declined 30 percent in 10 years for all of them. As against that, mining and quarrying death rate declined 42 percent. This was the greatest reduction in death rates of any of the eight principal groups studied by the Council.

MESA statistics, which are the most broad-based complete and up-to-date national statistics on health and safety presently available in the United States, also show a health and safety improvement record that is laudable.

In the years since MESA was established in 1973, the metal and nonmetal mining safety statistics show a rapidly declining annual number of fatalities. In 1976 the preliminary MESA figures show a reduction of 35.4 percent since 1973. The number in 1976 was 113 fatalities—down from 175 and 1973.

I should point out here that although preliminary 1976 figures indicate that metal and nonmetal mining employs approximately 30 percent more people than coal mining, the metal and nonmetal mining industry recorded 20 percent lower number of fatalities than did coal mining. During both 1975 and 1976, fewer metal and nonmetal mine-related deaths were reported than in any previously recorded year.

Disabling injury rates recorded by MESA have experienced similar reductions. For 1973, when MESA was formed in the Department of the Interior, through 1976, the disabling injury rate for metal and non-

metal mining has dropped 17.8 percent. They have built up their inspection force and constantly worked to train their inspectors.

Because they have increased the number and professional quality, there are operators and their employees who have become increasingly aware of safety and health considerations. Also, they have become better able to recognize and correct unsafe conditions at the mining site.

I should add parenthetically that the attitude of the MESA compliance officers, by being practical, by being helpful, by being cooperative, although solid—and they never let us alone if there is something wrong—but their basic helpfulness and their basic approach has been in the best tradition of American cooperation between enforcement and industry, in my opinion and many others.

Violation notices have been increasing by this force of MESA inspectors. Closures have been increased dramatically, almost 100 percent more in 1974 than in the prior year. The closure orders of 1975 were three-and-a-half times the number in 1973, and in the last year the number was almost five times the number in 1973.

They have provided us with excellent accident reporting systems which we use to provide help and assistance to our own supervisory people in identifying the causes, the nature, and correction of accidents.

In every area—statistics, research, inspection, violation notices, closure orders, education and training, development of realistic regulations, constructive assistance to industry safety programs, occupational health programs, in the virtual elimination of jurisdictional disputes with other Federal agencies—MESA has made admirable progress by any yardstick. We feel it would be inappropriate for them to be moved from their present situation where they have the ability to work with the Department of the Interior.

They have the educational facility in Beckley. They have the resource of the Department of the Interior at their disposal readily. Those things have been proven effective and we believe that they should be continued.

The late Mark Twain once said, "A man walking down the street carrying a cat by the tail is gaining at least 10 times as much experience at cat carrying as the man who is just standing there watching him." The Department of the Interior has been carrying the "cat" of mine safety for over 60 years. It has proved to be very proficient at mine safety education, research and training and the record shows that.

The only justification for change in any situation is the determination that something is wrong or ineffective in the present situation. Objective evaluation of MESA's performance under the aegis of the Department of the Interior does not demonstrate any need to change. But rather, it should be encouraged to continue its present effective activities.

If legislative changes are indicated, these can best be handled by amendments to the present Metal and Nonmetallic Mine Safety Act of 1966, which is a law designed by Congress specifically for metal and nonmetallic mining. True, it is nearly 11 years old and much has been learned in those 11 years.

It has proven to be a strong and effective law. It has been well administered by MESA. Their authority to close down an operation or withdraw equipment and men immediately from a perceived situation

of imminent danger does not require a court order as would be required under the provisions of S. 717.

Despite that power, the Board of Review established by the Metal and Nonmetallic Mine Safety Act was eliminated because the operators never found the need to appeal orders.

The National Crushed Stone Association has reviewed the present act in some depth and has prepared suggested changes which would strengthen that act even further. These proposed changes are respectfully submitted. We have them with us in limited copies, Senator, but we will be glad to give you adequate copies.

In substance, the act is tailored to and specifically designed for our industry just as the Coal Mine Health and Safety Act was tailored to meet the separate and vastly different requirements of coal mining.

It has been claimed that one reason for the proposal to transfer MESA to Labor from Interior, is that one of the principal missions is to maximize the development of the country's mineral and energy resources and that somehow there is a conflict of interest. We do not believe this is supported by the record. In fact, the argument is becoming moot.

President Carter has proposed that the many departments and agencies of the Government which concern themselves with energy be merged into a new Department of Energy and Senator Ribicoff has introduced such a bill, S. 826, cosponsored by two members of this subcommittee.

Under S. 826, those functions of the Secretary of the Interior, the Department of the Interior and officers and components of that Department exercised by the Bureau of Mines, relating to fuel supply-and-demand analysis, research and development relating to increased efficiency of production technology of solid-fuel minerals and coal-preparation analysis, be taken away and assigned to the new Department of Energy.

When we look at S. 717 and see that the Mine Safety and Health Training Academy at Beckley, as I mentioned earlier, do train these people. And again, if it remains in the Department of the Interior, it is a part and parcel of MESA's function to train mining-enforcement people and industry people. They come as a set, so to speak. We just do not believe this will be a practical measure to make that change.

We recommend rather than the subcommittee delay action, or table S. 717 until such time as Congress acts on the proposed bill, S. 826, and President Carter's reorganization plan for the executive branch has been clearly defined. To act on S. 717 at this time could be a futile exercise which NCSA believes would be damaging to the efficiency of MESA, the morale and effectiveness of its personnel, and would be deleterious to the cause of safety and occupational health improvement.

NCSA has serious objections to the excessively punitive civil and monetary penalty provisions of S. 717. The bill presupposes an attitude on the part of business which just is not true. Such emphasis on financial penalties indicates to me that there is not sufficient understanding of the tremendous impact of closure orders.

Closure orders are a real penalty and last year MESA issued 4,414 of them to metal and nonmetallic operations, an increase, as we indicated earlier. If you add, as S. 717 proposes, the labor-management

relations matters of continuing to pay people idled by closures, this penalty comes completely out of proportion. Such labor relations matters as are included under the Entitlement of Miners, section 112, have no relationship to safety and health and are inappropriate in this type of legislation.

If addressed, they should be included in legislation whose major purpose is to deal with labor-management relations or with equal employment opportunity. These issues are ill-placed and confuse rather than aid attempts of Government, business and labor to achieve more effective safety and health laws.

In my testimony I have tried to show that the Federal Metal and Nonmetallic Mine Safety Act of 1966 is a strong, highly effective law under which metal and nonmetal mine safety and health programs, first started voluntarily by the mining industry, have become even more effective through safety research, training, and enforcement efforts of the Bureau of Mines and MESA.

After 11 years, lessons have been learned, of course, and because of these lessons there may be need to amend the present law. There is no logic to its repeal or to the placing of all metal and nonmetal under the provisions of a law designed for coal mines. It is a different commodity requiring different considerations and applications and we do not feel this is needed and would be counterproductive to the cause of improving occupational safety and health.

I have recounted the fine record of MESA as evidenced by sharply declining fatality and disabling-injury rates. To transfer these people for any reason we do not feel is necessary.

Our final point is outlined in the presentation as protesting the inclusion of S. 717 provisions not germane to the stated purpose of improving mine safety and health. The miner entitlement provisions should be presented to the Congress in proposed legislation clearly directed to the improvement of labor-management relations or equal employment opportunity.

To include these provisions in a mine health and safety bill is to arouse confusion as to the true intent of the bill. Is it to improve mine health and safety, or is it to guarantee employment and compensation for miners?

Mr. Chairman, it has been a pleasure to testify here today and I thank you on behalf of the National Crushed Stone Association for your invitation to present this testimony.

[The prepared statement of Mr. Crolius follows:]

TESTIMONY
of the
NATIONAL CRUSHED STONE ASSOCIATION
before the
SUBCOMMITTEE ON LABOR
of the
SENATE COMMITTEE ON HUMAN RESOURCES
by
NEWELL T. CROLIUS
March 31, 1977

Mr. Chairman and members of the Subcomittee on Labor:

Your invitation to the National Crushed Stone Association to give testimony relative to S. 717 is greatly appreciated.

I am Newell T. Crolius, Director - Loss & Accident Prevention Services for the Harry T. Campbell Sons' Company, Towson, Maryland. My company operates two major limestone quarries, two smaller quarries and a major sand and gravel deposit. In addition, we have an important underground calcite stone mining operation. I am serving presently as the Chairman of the National Crushed Stone Association's Safety and Health Committee. I have been associated with safety and insurance for nearly 20 years, both in industry and in insurance companies. From 1958-1969 I was Administrative Sales Manager - American Mutual Liability Insurance Company, Baltimore, Maryland; 1969 - 1971 I was Vice President - Loss Control Management Corporation, Springfield, Virginia; 1971 - present I have been Director - Loss & Accident Prevention Services, Harry T. Campbell Sons' Company, Towson, Maryland. I am President, Maryland Self-Insurer's and Employees Compensation Association and am now Chairman, Baltimore City Noise Control Advisory Board. I am Former Chairman, Insurance & Safety Committee, Associated Builders & Contractors Association, Baltimore, Maryland, Metro Chapter. I am active in the Legislative

& Environmental Committees of the Baltimore County Chamber of Commerce and the Maryland State Chamber of Commerce. It is my honor today to appear before the committee on behalf of NCSA.

As their witness I represent the crushed stone producers who are members of NCSA. These companies produce from 70 to 75 percent of the crushed stone used as construction aggregates annually in the United States and operate out of approximately 800 quarries.

I would like to introduce my associates who are with me at the witness table and who are here to advise me as necessary so that I may fully answer any questions you may have.

Mr. Milt Durham is Safety Administrator for the Martin Marietta Corporation. He has worked in safety for 25 years and since 1965 in quarry safety management. He is certified by the Board of Certified Safety Professionals, a professional member of the American Society of Safety Engineers, member of the Executive Committee of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council, the Veterans of Safety, the Safety Council of Baltimore. He is past chairman of NCSA's Safety and Health Committee and past president of the Safety Engineering Club of Maryland.

Mr. Carl Metzgar is Group Safety Manager of Lone Star Industries, Greenwich, Connecticut. He has nine years professional experience in safety, and is certified by the Board of Certified Safety Professionals. He is a member of the Industrial Conference of the National Safety Council, the International Advisory Board of the Loss Control Management College, the American National Standards Institute B-20 Conveyor Safety Committee and is an Associate in Risk Management. He, too, is a past chairman of NCSA's Safety and Health Committee.

Mr. Jim Christie is Manager - Corporate Safety Administration of Vulcan Materials Company, Birmingham, Alabama. He has 25 years service in industrial loss prevention, a majority of which has been in explosives and mining. He is certified by the Board of Certified Safety Professionals, a professional member of the American Society of Safety Engineers, and a member of the Executive Committee of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council. He is currently the Vice Chairman of NCSA's Safety and Health Committee.

Mr. Robert C. Hollenbach is the Vice President of Governmental and Public Affairs of the NCSA. In that position he directs the staff support of the NCSA Safety and Health Committee and provides the NCSA with continuing liaison with officials of the Mining Enforcement and Safety Administration. Mr. Hollenbach is also a member of the Executive Committee of the Cement, Quarry and Mineral Aggregates Section of the National Safety Council.

I would like to preface my remarks today by pointing out that the weight of economic costs of accidents has risen so dramatically in the last ten years that any responsible management is bound to be far more concerned than ever before with the safety and health of its workers. For example, in 1970 U.S. industry spent approximately $1.5 billion in workman's compensation insurance premiums. By 1975, that figure rose 400% to approximately $6 billion. These figures do not include large corporation expenditures for self-insured programs. This rapid increase was due principally to two factors: increased medical costs and benefit increases mandated by legislation.

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Furthermore, as a result of the recent report of the National Commission on State Workman's Compensation Laws, benefit levels will continue to increase. Accidents are simply bad business - from both the moral and economic viewpoints.

The health and safety of our quarry workers is of tremendous concern to us. Most quarries are small operations employing an average of 12 - 20 men. The quarry has an average life of 80 years and our quarrymen and, in some cases their fathers, have worked there all their lives. We do care about their safety and their health. We have management labor teams consisting of father, sons, cousins and other relatives, some are supervisors and their relatives are laborers of various skill levels, working under them.

The National Crushed Stone Association's concern for the safety and health of quarry personnel has a long history. Almost 60 years ago, at the first organizational meeting of the NCSA, in 1918, the question of investigation of safety devices was one of the principle agenda items. Since that first meeting in Chicago, Illinois, NCSA has conducted an uninterrupted and strong safety program for those working in the crushed stone industry.

NCSA's safety programs and projects have included:

-Sponsorship of an annual safety competition since the 1920s.

-Participation in the Cement Quarry and Mineral Aggregate Section of the National Safety Council since 1928.

-Establishing, in 1928, an NCSA Accident Prevention Committee, now known as the Safety and Health Committee

-Producing and distributing safety check lists for 20 separate operations in the quarrying process.

-Training NCSA staff personnel in air pollution matters starting in 1959.

-Inauguration of air pollution field research projects in 1964 and 1965 which led to the development of the first practical measurement system for the industry.

-Operating air pollution control training programs for crushed stone producers.

-Conducting Noise Control Seminars for the industry.

-Developing and publishing Noise Control and Hearing Conservation Manuals for crushed stone industry use.

-Conducting a management level Loss Control Institute at Georgia State University.

-Developing and publishing a manual on "Safety in Oxy-Acetylene Operations" in January 1976.

In the mid 1960s as a result of our long term interest and concern with accident prevention and the health and safety of those who work in our quarries, NCSA played an important part in the Congressional consideration of Federal mine safety legislation which became the Federal Metal and Nonmetallic Mine Safety Act of 1966.

At that time, NCSA played an active role in assisting the Congress to better understand the many differences between types of mining for various mineral commodities.

Today, in this bill, and in other mine safety and health bills proposed in past recent sessions of Congress, there is a common thread which causes our industry great concern.

The general public and the executive and legislative branches of government do not readily understand that quarry operations are significantly different from other types of mining.

There will always be vast differences between coal mines and metal and nonmetal mines - differences in methods of operation and differences in the hazards faced by their miners in their respective work environments. These differences are even greater between coal mines and stone quarries.

Rock quarries are unique and different from coal mines. The operation methods, type of personnel, the geological qualities of the extracted material, the equipment used, the environmental hazards, and the possible occupational health disorders are all different from coal mining.

Even the few underground quarries are remarkably different from underground coal mines. Shafts are horizontal in stone mines versus the deep vertical shafts of coal mining. Natural ventilation through the cavernous 40' high openings provide fresh air to underground quarry workers. Explosive dust and gas are not present. The stability of the geological formation virtually rules out the possibility of roof falls, 40' solid rock pillars hold up 40' to 60' high ceilings in giant underground rooms. Conditions are so stable that worked out underground quarries are used in the midwest as long-term warehouses, storage centers and even office complexes because of the great natural stability of temperature and humidity and air quality of underground stone quarries.

For these reasons, we strongly protest the intended repeal of the Metal and Nonmetallic Mine Safety Act of 1966 and the proposal in S. 717 to place stone quarries under the provisions of the Federal Coal Mine Health and Safety Act.

NCSA and its member companies feel that members of this subcommittee and its staff are not familiar with the many differences between stone quarries and other types of mining. We offer to make arrangements for this subcommittee and its staff to visit representative surface and underground stone quarries to further clarify and explain these differences and to lend support to our arguments against being placed under such provisions as called for in S. 717.

The second major area of NCSA's concern with S. 717 is the proposal to transfer the Mining Enforcement and Safety Administration to the Department of Labor.

NCSA opposes such a transfer because it is our belief that such a transfer from the Department of the Interior to the Department of Labor would prove counter-productive to the common safety and health improvement goal of the Congress, the Administration, the mining industry and labor.

From the time the Federal Metal and Nonmetallic Mine Safety Act was enacted in 1966, the agency charged with the enforcement of its provisions has been seriously handicapped by one factor. This same factor seriously handicaps the efficiency of the Occupational Safety and Health Administration of the Department of Labor.

That restraining, handicapping factor is that Congress has not seen fit to appropriate the necessary funds in sufficient quantity to allow either agency to engage in adequate occupational health research, to hire and train the number of enforcement personnel adequate to the task, to assist the unions and the industry in providing adequate safety and health education, and to perform other important related tasks.

Despite this critical and basic disadvantage, soon after its establishment by the Secretary of Interior in 1973, the new Mining Enforcement and Safety Administration, found administrative and technical support from other bureaus and divisions of the Department of the Interior which understood mining, its special characteristics and who were interested in safety and health.

Since the establishment of MESA as a separate enforcement agency within the Department of the Interior, no major tragedy has occurred in metal and nonmetallic mining in the United States. Credit for this is due, we believe, to the dedicated efforts of MESA and the cooperative assistance MESA has given to both industry and labor.

As a result, safety and health enforcement under MESA has been better than for any other industrial group.

Preliminary accident figures of the eight principle industrial groups are compiled annually by the National Safety Council. Their preliminary figures for 1976 (which are scheduled for publication in next month's National Safety News magazine) show that in comparing the ten year changes of the accidental death rate of workers in these eight principle industrial groups, the accidental death rate declined 30% in ten years for all industrial groups.

For the industrial group, mining and quarrying, the death rate decline was 42%. This was the greatest reduction in death rate of any of the eight principle industrial groups studied by the National Safety Council.

MESA statistics (which are the most broad-based, complete and up-to-date national statistics on health and safety presently available in the U.S.) also show a health and safety improvement record that is laudable.

In the years since MESA was established in 1973, the metal and nonmetal mining safety statistics show a rapidly declining annual number of fatalities. 1976 preliminary MESA figures show a reduction of 35.4% since 1973. The number in 1976 was 113 fatalities - down from 175 in 1973.

I should point out here that although preliminary 1976 figures indicate that metal and nonmetal mining employs approximately 30% more people than does coal mining, the metal and nonmetal mining industry recorded a 20% lower number of fatalities than did coal mining.

During both 1976 and 1975, fewer metal and nonmetal mine related deaths were reported than in any previously recorded year.

Disabling injury rates recorded by MESA have experienced similar reductions. From 1973, when MESA was formed in the Department of the Interior, through 1976 the disabling injury rate for metal and nonmetal mining has dropped 17.8%.

Since 1973, MESA has been steadily building up its inspection force and has worked to improve the training of these inspectors.

Because the inspectors increased in number and in professional quality, mine operators and their employees have become increasingly aware of safety and health considerations. Also, they have become better able to recognize and correct unsafe conditions at the mining site.

Violation notices, too, have been issued in steadily increasing numbers by this force of professional MESA inspectors. So, too, have closure orders issued by MESA increased dramatically.

In 1974, almost 100 percent more closure orders were issued than in 1973. In 1975, the number of closure orders was 3½ times the number issued in 1973 and last year, 1976, the number was almost five times greater than those issued in 1973.

The MESA inspectors, the technical assistance MESA provides to our industry and the excellent accident reporting systems which MESA has developed have supplemented well the on-going industry voluntary safety programs. MESA statisitics are providing better guidance for our operators to help prevent accidents and improve health conditions for workers.

In every area--statistics, research, inspections, violation notices, closure orders, education and training, development of realistic regulations, constructive assistance to industry safety programs, occupational health programs, and in the virtual elimination of jurisdictional disputes with other Federal agencies -- MESA has made admirable progress by any yardstick.

When people move, when their organizations are changed, when working relationships are disrupted; their ability to work, or to continue at the same level of competence on existing projects or activities is often temporarily interrupted while they adjust to the change, develop new working understandings and relationships, etc. MESA has demonstrated that it is proficient in the enforcement of the Metal and Nonmetallic Mine Safety Act and that this proficiency is increasing while death and injury rates are coming down. The National Crushed Stone Association would ask that this proven successful record not be jeopardized by a disruptive transfer between departments of the government. Rather, we would urge the Congress to support all Federal health and safety programs with increased funds for enforcement, for occupational health research, and for education and training.

The late Mark Twain once said, "A man walking down the street carrying a cat by the tail is gaining at least 10 times as much experience at cat carrying as the man who is just standing there watching him." The Department of the Interior has been carrying the "cat" of mine safety for over 60 years. It has proved to be very proficient at mine safety education, research and training and the record shows that.

The only justification for change in any situation is the determination that something is wrong or ineffective in the present situation. Objective evaluation of MESA's performance under the aegis of the Department of the Interior does not demonstrate any need to change. Rather, MESA should be encouraged to continue its present effective activites. If legislative changes are indicated these can be best handled by amendments to the present Metal and Nonmetallic Mine Safety Act of 1966, which is a law designed by Congress specifically for Metal and Nonmetal mining. True, it is nearly 11 years old and much has been learned in those 11 years.

The Metal and Nonmetallic Mine Safety Act of 1966 has proven to be a strong and effective law. It has been well administered by MESA whose inspectors have great power under it. Their authority to close down an operation or withdraw equipment and men immediately from a perceived situation of imminent danger does not require a court order as would be required under the provisions of S. 717.

And yet, despite this great power of the MESA inspectors, the Federal Metal and Nonmetallic Mine Safety Board of Review (established by the act so that operators could appeal to it for consideration of annulment or revision of orders issued by inspectors) was never

appealed to by operators and was, therefore, found to be not necessary during the 94th Congress.

The National Crushed Stone Association has reviewed the present Act and prepared suggested changes which would strengthen the Act even further. These proposed changes in the Metal and Nonmetallic Mine Safety Act of 1966 are respectfully submitted to this Subcommittee. NCSA strongly recommends that the Federal Metal and Nonmetallic Mine Safety Act of 1966 be retained and modified as necessary. It is an Act tailored to and specifically designed for metal and nonmetal mining just as the Coal Mine Health and Safety Act of 1969 was tailored to meet the separate and vastly different safety and health requirements of coal mining.

It has been claimed that one reason for the proposal, contained in S. 717, to transfer MESA from the Department of the Interior to the Department of Labor is that one of the principle missions of the Department of the Interior is to maximize the development of the country's mineral and energy resources and that this mission conflicts with the ability of the Department of the Interior to manage mine safety enforcement.

This claim is, in our opinion, unsupported. Further it is an argument which is becoming moot.

President Carter has proposed that the many departments and agencies of government which concern themselves with energy be merged into a new Department of Energy and Senator Ribicoff has introduced such a bill, S. 826 which is co-sponsored by two members of this subcommittee. Under S. 826, those functions of the Secretary of the Interior, the Department of the Interior and officers and components of that Department exercised by the Bureau of Mines

relating to fuel supply and demand analysis; research and development relating to increased efficiency of production technology of solid fuel minerals; and coal preparation and analysis would be taken away and assigned to the new Department of Energy.

Also, when we look at S. 717 and see that the Mine Safety and Health Training Academy at Beckley, West Virginia which is used to train mine personnel and MESA inspectors and that the mine safety research functions of the Bureau of Mines will remain with the Department of the Interior, we see serious faults in the S. 717 plan to transfer MESA to the Department of Labor.

To place mine safety enforcement in one Department of the Executive Branch and the training of the enforcement personnel in another Department does not seem practical. It also seems to be unrealistic to require enforcement of safety from personnel in one Department and the responsibility for the research necessary to the advancement of miner safety through engineering and equipment design in another agency. S. 717 would seriously fragment an existing, well-functioning team of safety educators, safety researchers and safety enforcement inspectors.

NCSA recommends that this subcommittee delay action, or table, S. 717 until such time as Congress acts on the proposed bill, S. 826, and President Carter's reorganization plan for the Executive Branch has been clearly defined. To act on S. 717 at this time could be a futile exercise which NCSA believes would be damaging to the efficiency of MESA, the morale and effectiveness of its personnel, and would be deliterious to the cause of safety and occupational health improvement.

NCSA has serious objections to the excessively punitive civil and monetary penalty provisions of S. 717. The bill presupposes an attitude on the part of business which just is not true. Such emphasis on financial penalties indicates to me that there is not sufficient understanding of the tremendous impact of closure orders. Closure orders are a real penalty and last year MESA issued 4,414 of them to metal and nonmetal operations. This was an increase of 37½% over the number issued by MESA in 1975. If you add, as S. 717 proposes, the labor-management relations matters of continuing to pay people idled by closures this penalty becomes completely out of proportion. Such labor relations matters as are included under Entitlement of Miners, Section 112, have no relationship to safety and health and are inappropriate in this type of legislation. If the Congress feels strongly that these considerations must be addressed, they should be included in legislation whose major purpose is to deal with labor-management relations or with equal employment opportunity. These issues are ill-placed and confuse rather than aid attempts of government business and labor to achieve more effective safety and health laws.

In my testimony this morning, I have tried to show that the Federal Metal and Nonmetallic Mine Safety Act of 1966 is a strong, highly effective law under which metal and nonmetal mine health and safety programs, first started voluntarily by the mining industry, have become even more effective through safety research, training and enforcement efforts of the Bureau of Mines and MESA. After eleven years, lessons have been learned of course, and because of these lessons learned, there is need to amend the present law. There is no logic to its repeal or to the placing all metal and nonmetal

under the provisions of a law designed for coal mines. Coal is a starkly different commodity requiring totally different considerations and applications than commodities in the metal and nonmetal category. S. 717 is not needed and would be counter productive to the cause of improving occupational safety and health.

I have also recounted the fine record of MESA as evidenced by sharply declining fatality and disabling injury rates. To transfer an organization and its people away from the very functions which support them and give them their in-depth strength with no apparent reason other than a perceived "conflict of interest", which NCSA does not acknowledge, is unwise. With the proposed organization of a Department of Energy under S. 826 and with President Carter's announced plan to reorganize the Executive Branch, the proposal to transfer MESA is ill-timed.

Our final major point of objection to S. 717 was outlined in this presentation as protesting the inclusion of S. 717 of provisions not germaine to the stated purpose of improving mine health and safety. The miner entitlement provisions should be presented to the Congress in proposed legislation clearly directed to the improvement of labor-managment relations or equal employment opportunity. To include these provisions in a mine health and safety bill is to arouse some confusion as to the true intent of the bill. Is it to improve mine health and safety, or is it to guarantee employment and compensation for miners?

Mr. Chairman, it has been a pleasure to testify here today and I thank you on behalf of the National Crushed Stone Association for your invitation to present this testimony.

The CHAIRMAN. Thank you very much, Mr. Crolius, for a very thoughtful and comprehensive statement. I think it might be wise to proceed to the Gypsum Association and then see how much time there is for discussion.

STATEMENT OF ED KILLIAN, PRESIDENT, THE GYPSUM ASSOCIATION; BRUCE JACKSON, COUNSEL; FRED ROGERS, DIRECTOR OF ADMINISTRATION SERVICES AND DIRECTOR OF SAFETY; JIM CORNELL, CHAIRMAN, SAFETY COMMITTEE; AND OLIVER CAMPBELL, DIRECTOR OF MINES AND QUARRIES, NATIONAL GYPSUM COMPANY, A PANEL

Mr. KILLIAN. Thank you, Mr. Chairman.

My name is Ed Killian. I am here today representing the Gypsum Association. I am its president. I am also president of the Gold Bond Building Products, a division of the National Gypsum Co. located in Buffalo.

My colleagues with me today are, from the far right, Mr. Bruce Jackson, who is the association counsel. Next to Mr. Jackson is Mr. Fred Rogers, director of administration services and director of safety for the Gypsum Association. To my immediate right is Mr. Jim Cornell, corporate director of safety for United States Gypsum Co. and chairman of the safety committee for the Gypsum Association. In the middle is Mr. Oliver Campbell, director of mines and quarries for the National Gypsum Co.

Mr. Chairman, we wish to express our appreciation for the opportunity to appear before you today to present our views with respect to Senate bill 717 currently before this committtee. We have been requested to shorten our comments and summarize as much as possible. Thus, I will not review directly the list of our member companies, or their products, or the various operating facilities, including mines and quarries because this is contained in our written testimony.

Major accident reduction activities have occurred over the years in our industry and several of our safety training programs have been included in those of governmental agencies. Additionally, our member companies, with the help of the Bureau of Mines and MESA, have had occupational safety and health surveillance programs for many years. These have included biological testing as well as testing the workers' environment for exposures which might exist in the areas of dust, noise and air quality.

Most of our safety activities predate the advent of the federalized safety programs by several years. Because of this fact, our industry was called upon in the early organizational years to work with the governmental agencies to establish meaningful and workable safety standards through industry representation and standard making advisory committees.

In addressing S. 717 today, we will attempt to briefly comment on the principal features of this proposed legislation which we think should be given additional consideration by every member of this committee before the proposed legislation contained in S. 717 is voted on by the committee.

In attempting to summarize, I would hit the following highlights. First, the transfer of mine health and safety regulations from Interior to Labor. Second, the consolidation of coal and nonmetallic mining industries under a single amended Coal Mine Health and Safety Act. And third, various specific provisions of the proposed legislation.

First, to the transfer of mine health and safety regulations from Interior to Labor. The gypsum industry is presently regulated by two Federal safety programs, that of the Department of the Interior—MESA—and the Department of Labor—OSHA. We feel that the only similarity between those two agencies and the laws which they administer is the fact that they are both Federal safety agencies.

The safety standards of MESA and their training programs are geared to mine safety almost exclusively, while those of OSHA tend to cover all areas of industrial safety. The who or how in accomplishing this job is of little importance to the man in the workplace. The fact that it is done and done effectively by sufficient numbers of qualified personnel is most important.

The major concern to the man in the workplace would be the possible loss of total safety attention given him while energies were focused on legislative changes to transfer the responsibility for his safety from one agency to another.

It has been suggested that the mine safety function must be removed from Interior due to a conflict of that department's mission to promote the development of the Nation's mineral resources on one hand, and to protect the safety and health of the Nation's miner on the other. We believe that any suggestion that the Department of the Interior would not be fully dedicated to the enforcement of any mine safety legislation is totally unsupported by MESA's record in this field.

We feel that the same consideration was given by Congress in placing mine safety enforcement under Interior as was given to placing general health and safety legislation under Labor. In the first case, mine safety and education was already under Interior, so it was only logical to place that legislation that would permit enforcement of mine safety practices under the same body, especially since this is the only place where qualified mine personnel were already available to carry out the desires of Congress as contained in mine safety legislation.

Similarly, sound considerations were presumably involved in the placement of the general health and safety legislation, or OSHA, under Labor. The wisdom of Congress in placing these two monumental safety tasks under the agencies where it did is not and should not be a point of dispute, but rather the question should be whether the intention that Congress outlined in the respective safety legislation is being properly implemented by these agencies.

Let's honor the original intent of Congress and continue to handle mining safety under MESA and the Department of the Interior apart from the general safety and health sector under OSHA and the Department of Labor. Under MESA and Interior the accident frequency rate for nonmetal mining has been steadily improved since the enactment of the Federal Metal and Nonmetallic Mine Safety Act, as is shown in our exhibit 2 attached.

By reference, the last 8 years, all nonmetal frequency rate dropped from 24.92 accidents per million manhours to 14.38, or a drop of 60 percent.

During this period of time our industry has enjoyed superior training activity by the Department of Interior personnel in the fields of accident prevention, first aid, mine and self rescue. By comparison, OSHA under the Department of Labor in its area of responsibility, has provided inspection service and associated civil penalties.

Second, to direct our attention to the consolidation of the coal and metal-nonmetallic industries under an amended Coal Mine Health and Safety Act. Mr. Chairman, as we interpret this provision of S. 717, it appears there is nothing to prevent the application of coal standards at some time in the future to noncoal operations.

This fact greatly concerns the gypsum industry since if such a possibility does exist and did, in fact, occur it would have a devastating effect on our industry. Just to give you some monetary projection of our concern, the cost for our industry to meet coal standards would involve an initial outlay of nearly $8 millon and a continuing annual expenditure in excess of $950,000 excluding maintenance. This is detailed in our exhibit 1 attached.

More importantly, these expenditures will not contribute to the improved health and safety of the miners in our industry. We feel that such resources could be better utilized in the improvement of our industry's productivity which will ultimately, through cost reduction, have a favorable impact on our Nation's gross national product.

We strongly feel therefore, that coal standards must not be permitted to apply to noncoal operations and request that S. 717 be amended to clearly indicate that it is not the intent, either now or in the future to apply coal standards to noncoal operations. In any event, we request that this intention be clearly indicated in the legislative history when S. 717 is reported by the committee.

I would like now to make some comments, if I may, to the specific provisions of the act. I will summarize by reference sections 102(a)(6), section 104(e), section 106(c)(1) and section 112.

We strongly feel that any reference to the workers compensation in these sections must be excluded from any proposed safety legislation since this is a subject of collective bargaining and has no significance to the safety and health of the Nation's work force. These items should be more properly considered under the rules and regulations of the Labor Management Relations Act.

Section 102(g) states that "No objection that has not been urged before the Secretary shall be considered by the court," et cetera. We interpret this language to mean that if a party did not object to a proposed standard during the prescribed comment period he can not challenge the validity of the final standard.

If our interpretation is correct we strongly object to the inclusion of such language. This provision places a tremendous burden on the industry to be intimately involved at all stages of agency rulemaking in order to preserve a right to object to promulgated standards. In many cases time and financial considerations simply will not permit such extensive involvement.

Additionally, an affected party may agree with the concept of a proposed standard but find it necessary to object to the standard in its final form. A person should never be restricted from testing the validity of agency action in the courts when he can show that he is adversely affected by that action.

Reference to section 103 permits the appointment of an advisory committee to assist the Secretary in standards setting functions. We strongly support the use of advisory committees for the review of new and existing standards under consideration by the Secretary.

Section 103(f)(i). This section provides that miners who believe that a standard violation exists that threatens harm or that imminent danger exists, may request an inspection by the Secretary. We believe that such a provision serves no worthwhile purpose without a requirement that the miner first notify the operator of any such conditions.

Furthermore, as a prerequisite to requesting an inspection, a miner should be required to demonstrate to the Secretary's satisfaction that he has first notified the operator of the situation and that the operator has not taken steps to correct the condition.

The most important consideration should be the immediate correction of the hazardous condition. The purpose of this legislation should be to protect the health and safety of the workers and not simply to provide some mechanism to establish violations. The current provision satisfies the latter purpose while at the same time neglecting the former.

Section 104(i). This section requires all accidents to be promptly reported to the Secretary. We submit that this is a costly and unnecessary requirement. We believe it should be sufficient to require notification of only those accidents causing death or serious injury. At the very least, the term "accident" should be sufficiently defined to include only "serious" accidents.

Section 106(a) and (b). In both of these sections there are provisions precluding judicial and administrative review of citations and penalties where an operator fails to notify the Secretary of his intent to contest the matter. We believe that the following language should be added to each of these provisions: "unless the failure or neglect shall be excused because of extraordinary circumstances."

Section 111. This section proposes the establishment of a mandatory penalty schedule upon the mine operator for each and every violation of the act, a standard under the act or a rule, order, or regulation promulgated pursuant to the act. We oppose the imposition of any mandatory penalty under this proposed legislation and request such penalties be at the discretion of the Secretary or his representative on a case-by-case basis. This would allow the operator to present any mitigating circumstances relative to the alleged violation prior to the establishment of a penalty.

In conclusion, we have attempted to highlight the effects that this proposed legislation as contained in S. 717 would have on the gypsum industry. On the basis of the facts presented, we feel that you will agree that additional consideration must be given by this committee before you permit such proposals to become law, especially those which we have shown would have a severe detrimental effect on our industry's ability to supply building materials to the market place in required quantities and at reasonable, noninflationary prices.

May we suggest that the energies of this committee be directed to the now existing safety organizations, MESA and OSHA, in an attempt to improve their operating efficiencies so as to perform to capacity the original safety obligations bestowed upon them by Congress.

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Mr. Chairman, we thank you for the opportunity to appear here today and present our industry's views.

The CHAIRMAN. Thank you very much, Mr. Killian.

That concludes the two groups' formal statements; am I right? Are there any other comments by any of the members of your two groups?

[No response.]

The CHAIRMAN. These are very, very constructive statements in both instances and offer much for us to think about. You raise certain problems that have been mentioned before and some that have not. You suggest that the employee transfer in a hazardous condition situation should be a matter of collective bargaining. That point has not been previously raised that I can recall.

It certainly will require our further review. Other points have been made by other witnesses. You also refer to the matter of raising timely objection in connection with the standard setting procedure. That point has been made and I believe your construction is broader than what we intended here. It was thought that any person had to object earlier before that person could raise it in a later forum. That isn't the way it was intended for this provision to be interpreted. What we intended was that the substance of the objection had to be raised earlier or it couldn't be raised later.

Even with that interpretation, there are problems that I see, and you see also, which were raised yesterday.

On the transfer, of course, this is a basic concern of yours, of all of you. This has been developed as an administrative objective by this committee for some time, on the principle that there was a dual responsibility in Interior. It presented certain possibilities of conflict.

We thought the Labor Department more properly could handle the total industrial, including mining safety programs of this country. This is basic to your concern and it is basic to the objective of the bill. I would, if we had more time, wish to develop more of these points, but because of our limitations this morning, I would like to say if we in further review want to know from you could we put questions to you in writing?

Mr. CROLIUS. You certainly may.

Mr. KILLIAN. Yes.

The CHAIRMAN. Senator Javits?

Senator JAVITS. I would like to join the Chair on behalf of the minority thanking these gentlemen for the specificity of their testimony. We will study it very carefully and consider it closely in connection with this legislation. Thank you very much for your appearance.

The CHAIRMAN. Thank you very much.

[The prepared statement of the Gypsum Association and other information supplied for the record follows:]

STATEMENT OF THE GYPSUM ASSOCIATION

ON SENATE BILL 717

"FEDERAL MINE SAFETY & HEALTH AMENDMENTS ACT OF 1977"

BEFORE THE

SENATE HUMAN RESOURCES COMMITTEE

UNITED STATES SENATE

MARCH 31, 1977

STATEMENT OF THE GYPSUM ASSOCIATION
ON SENATE BILL 717
"FEDERAL MINE SAFETY & HEALTH AMENDMENTS ACT OF 1977"
BEFORE THE
SENATE HUMAN RESOURCES COMMITTEE
UNITED STATES SENATE

Chairman Williams and other members of the committee, we wish to express our appreciation for the opportunity to appear before you today to present our views with respect to Senate Bill 717 currently pending before this committee.

The Gypsum Association is a not-for-profit corporation with headquarters in Evanston, Illinois. It is a national trade association whose membership is comprised of the following manufacturers which account for over 94% of the gypsum products manufactured throughout the United States:

The Celotex Corporation, Tampa, Florida
The Flintkote Company, Rochell Park, New Jersey
Georgia-Pacific Corporation, Portland, Oregon
Grand Rapids Gypsum Company, Grand Rapids, Michigan
Kaiser Cement & Gypsum Company, Oakland, California
National Gypsum Company, Buffalo, New York
Temple Gypsum, Inc., Diboll, Texas
United States Gypsum Company, Chicago, Illinois

Gypsum products manufactured by our membership are vital components in over 85% of the new housing construction in the United States. These companies operate 73 gypsum plant facilities, 25 gypsum surface mining operations and 13 underground mining operations throughout the United States, employing approximately 50,000 people. In addition, many of our member companies are

involved in the mining, processing and manufacture of products from limestone, dolomite, cement rock, refractory clays, shale, pyrophylite and talc, mica, and perlite, as well as other diversified industries primarily associated with building construction.

The gypsum industry is quite proud of its industry safety program as administered through the Safety Committee of the Gypsum Association. Major accident reduction activities have occurred over the years, and several of our safety training programs have been included in those of governmental agencies. Most of our safety activities predate the advent of the "Federalized" safety programs by several years and because of this fact, our industry was called upon in the early organizational years to work with governmental agencies to establish meaningful and workable safety standards through industry representation on standards-making advisory committees. We are old hands at working with the government on programs designed to protect the health and welfare of the worker and once such programs are developed, our industry supports their use. We feel that by assisting in the developmental stages and promoting the use of governmental safety programs, we are strengthening our own industry safety programs.

In addressing S 717 we will attempt to briefly comment on the principle features of this proposed legislation which we think must be given additional consideration by every member of this committee before the proposed legislation contained in S717

is voted on by this committee, as follows:

(1) Transfer of mine health and safety regulation from Interior to Labor;

(2) Consolidation of the coal and non-metallic mining industries under a single, amended coal mine health and safety act;

(3) Specific provisions of the proposed legislation.

Transfer of Mine Health and Safety Regulations From Interior to Labor

The gypsum industry is presently regulated by two federal safety programs, that of the Department of the Interior (MESA) and the Department of Labor (OSHA). We feel that the only similarity between these two agencies and the laws which they administer is the fact that they are both federal safety agencies. The safety standards of MESA and their training programs are geared to mine safety almost exclusively, while those of OSHA tend to cover all other areas of industrial safety. The WHO or HOW in accomplishing this job is of little importance to the man in the work place. The fact that it is done and done effectively by sufficient numbers of qualified personnel is ~~all~~ most important. The major concern to the man in the work place would be the possible loss of total safety attention given him while energies were focused on legislative changes to transfer the responsibility for his safety from one agency to another.

It has been suggested that the mine safety function must be removed from Interior due to a conflict of that department's missions to promote the development of the nation's mineral

resources on one hand, and to protect the safety and health of the nation's miners on the other. We believe that any suggestion that the Department of the Interior would not be fully dedicated to the enforcement of any mine safety legislation is totally unsupported by MESA's record in this field.

We feel that the same consideration was given by Congress in placing mine safety enforcement under Interior as was given to placing general health and safety legislation under Labor. In the first case, mine safety and education was already under Interior, so it was only logical to place the legislation that would permit enforcement of mine safety practices under this same body, especially since this was the only place where qualified mine personnel were already available to carry out the desires of Congress as contained in the mine safety legislation. Similarly sound considerations were presumably involved in the placement of the general health and safety legislation under Labor. The wisdom of Congress in placing these two monumental safety tasks under the agencies where it did is not and should not be a point of dispute, but rather the question should be whether the intention that Congress outlined in the respective safety legislation is being properly implemented by these agencies.

Let's honor the original intent of Congress and continue to handle mining safety under MESA and the Department of Interior apart from the general safety and health sector under

OSHA and the Department of Labor. Under MESA and Interior the accident frequency rate for non-metal mining has been steadily improved since the enactment of the Federal Metal and Non-metallic Mine Safety Act, as is shown in our Exhibit #2. During this period of time our industry has enjoyed superior training activity by Department of Interior personnel in the fields of accident prevention, first aid, mine and self rescue. By comparison OSHA under the Department of Labor in its area of responsibility has provided only an inspection service and associated civil penalties.

Secondly to direct our attention to

Consolidation of the Coal and Metal-Non-metallic Mining Industries Under an Amended Coal Mine Health and Safety Act

~~Gentlemen~~ mr Chairman, as we interpret this provision of S717 it appears that there is nothing to prevent the application of coal standards at some time in the future to non-coal operations. This fact greatly concerns the gypsum industry since if such a possibility does exist and did, in fact, occur it would have a devastating effect on our industry. Just to give you some monetary projection of our concern, the cost for our industry to meet coal standards would involve an initial outlay of nearly 8 million dollars and a continuing annual expenditure in excess of $950,000 excluding maintainance. ~~as~~ This is detailed in our Exhibit #1 attached.

More importantly, these expenditures will not contribute to the improved health and safety of miners in our industry. We feel that such resources could be better utilized in the improvement of our industry's productivity which will ultimately, through cost reduction, have a favorable impact on our nation's

gross national product. We strongly feel therefore, that coal standards must not be permitted to apply to non-coal operations and request that S717 be amended to clearly indicate that it is not the intent, either now or in the future, to apply coal standards to non-coal operations. In any event, we request that this intention be clearly indicated in the legislative history when S717 is reported by this committee.

I would like now to make

Comments on Specific Provisions

Section 102(a)(6)

Requires that any miner transferred as a result of exposure to a hazard shall continue to receive compensation for such work at not less than the regular rate of pay for the classification he held prior to the transfer. We strongly feel that any reference to the worker's compensation must be excluded from any proposed safety legislation since this is subject of collective bargaining and has no significance to the safety and health of the nation's work force. Those items should more properly be considered under the rules and regulations of the Labor Management Relations Act.

Section 102 (g)

States that "No objection that has not been urged before the Secretary shall be considered by the court, etc.---" We interpret this language to mean that if a party did not object to a proposed standard during the prescribed comment period he can not challenge the validity of the final standard. If our

interpretation is correct we strongly object to the inclusion of such language. This provision places a tremendous burden on the industry to be intimately involved at all stages of agency rule-making in order to preserve a right to object to promulgated standards. In many cases time and financial considerations simply will not permit such extensive involvement.

Additionally, an affected party may agree with the concept of a proposed standard but find it necessary to object to the standard in its final form. A person should never be restricted from testing the validity of agency action in the courts when he can show that he is adversely affected by that action. Such a restriction is contrary to our system of administrative law.

Section 103

Permits the appointment of an advisory committee to assist the Secretary in standards setting functions. We strongly support the use of advisory committees for the review of new and existing standards under consideration by the Secretary.

Section 103 (f)(i)

This section provides that miners who believe that a standard violation exists that threatens harm or that imminent danger exists, may request an inspection by the Secretary. We believe that such a provision serves no worthwhile purpose without a requirement that the miner first notify the operator of any such conditions. Furthermore, as a prerequisite to requesting an inspection, a miner should be required to demonstrate to the

Secretary's satisfaction that he has first notified the operator of the situation and that the operator has not taken steps to correct the condition. The most important consideration should be the immediate correction of the hazardous condition. The purpose of this legislation should be to protect the health and ~~welfare~~ safety of the workers and not simply to provide some mechanism to establish violations on the part of operators. The current provision satisfies the latter purpose while at the same time neglecting the former.

Section 104 (e)

This section requires that an employee representative accompany the inspector on his walk around inspection and that the employee representative be compensated for the time spent on such inspections. We strongly oppose this concept since non-union mines, which make up 50% of our nation's mines, have no pre-selected representative nor the mechanics for selection of such an employee representative. Further, we strongly oppose the inclusion of matters dealing with workers compensation as those items are the subject of collective bargaining and should be considered under the Labor Management Relations Act. Additionally, we strongly oppose the inclusion of any non-employee personnel on such an inspection, since we feel only employee personnel will be sufficiently knowledgeable to render constructive input to such an inspection.

Section 104 (i)

This section requires all accidents to be promptly reported to the Secretary. We submit that this is a costly and unnecessary requirement. We believe it would be sufficient to require notification of only those accidents causing death or serious injury. At the very least, the term "accident" should be sufficiently defined to include only "serious" accidents.

Section 106 (a) + (b)

In both of these sections there are provisions precluding judicial and administrative review of citations and penalties where an operator fails to notify the Secretary of his intent to contest the matter. We believe that the following language should be added to each of these provisions: "unless the failure or neglect shall be excused because of extraordinary circumstances".

Section 106 (c) (1) ✓

This section requires that no miner shall be discharged or otherwise discriminated against because such employee is the subject of medical evaluation and potential transfer. Once again we feel that Congress is attempting to draw matters of labor relations nature into proposed safety legislation. It is possible that an employee might consider any transfer for medical or other reasons discriminatory. Such collective bargaining issues must not be included in safety legislation. These matters are best considered under the Labor Management Relations Act.

Section 111

This section proposes the establishment of a mandatory penalty schedule upon the mine operator for each and every violation of the Act, a standard under the Act or a rule, order or regulation promulgated pursuant to the Act. We oppose the imposition of any mandatory penalty under this proposed legislation and request such penalties be at the discretion of the Secretary or his representative on a case-by-case basis. This would allow the operator to present any mitigating circumstances relative to the alleged violation prior to the establishment of a penalty.

Section 112

We object to any provision relative to the compensation of miners idled by withdrawal orders or a refusal to comply with such orders. Once again, matters of compensation can best be handled through collective bargaining or company policy between the parties and should not be a subject of federal mine safety legislation.

CONCLUSION

Gentlemen, we have attempted to highlight the effects that this proposed legislation as contained in S717 would have on the gypsum industry. On the basis of the facts presented, we feel that you will agree that additional consideration must be given by this committee before you permit such proposals to become law, especially those which we have shown would have a severe detrimental effect on our industry's ability to supply

building materials to the market place in required quantities and at reasonable, non-inflationary prices.

May we suggest that the energies of this committee be directed to the now existing safety organizations MESA and OSHA in an attempt to improve their operating efficiencies so as to perform to capacity the original safety obligations bestowed upon them by Congress.

We thank you for the opportunity to appear here today and present our industry's views.

EXHIBIT I

ADDITIONAL ESTIMATED PROBABLE COST RESULTS
FOR INDUSTRY OPERATIONS TO COMPLY WITH COAL ACT

		Total Initial Investment	Total Annual Expenditur
1.	FIRE FIGHTING AND CONTROL:		
	A. Investment required for specified fire fighting equipment; Waterlines to each section or 2 portable fire units.	$415,000	$ 61,000
	B. Waterlines required parallel to entire length of all belt conveyors with outlets approximately 300 feet intervals and 500 feet of fire hose.	180,000	17,000
	C. Water deluge foam generator, automatically activated at all belt drives. Minimum water supply specified 1000 to 3000 gallons.	42,000	0
	D. Fire sensor systems full length of each belt.	84,000	0
	E. Additional labor for monitoring, testing, inspections of fire sensors, fire extinguisher systems, etc.	0	14,000
	F. Additional labor costs for fire fighting training, drill, formal plans, etc.	16,000	16,000
	G. Fire suppression devices required on all unattended underground equipment with necessary sensors; Fire-resistant hydraulic fluids required.	237,000	26,000

	H. Fire suppression devices required on all electrical attended equipment or fire-resistant hydraulic fluids required.	208,000	20,000
		$1,182,000	$154,000
2.	ESCAPE AND EVACUATION:		
	A. One escapeway must be on intake air from each working area.	$3,430,000	$292,000
	B. Refuge chambers required.	95,000	19,000
	C. Emergency hoist facilities required in all shafts more than 20 feet deep. (no reference to incliners)	400,000	4,000
		$3,925,000	$315,000
3.	VENTILATION - MAIN FANS, ETC.		
	A. Surface installation - offset 15 feet, etc.	55,000	0
	B. Separate, independent power supply for main fan.	88,000	0
	C. Continuous operation of main fans - power usage.	0	7,000
	D. Detailed Ventilation Plan; Fan inspections and records - added technical labor.	13,000	9,000
	E. Permanent stopping and overcasts - non-combustible construction.	82,000	14,000
	F. Each mechanical section requires a separate air split.	375,000	127,000

G.	Belt and/or trolley entrys separated from intake and return air courses; Limit air velocity in belt and trolley entrys (100 FPM belt, 250 FPM trolley).	244,000	29,000
H.	Battery charging, compressors, pumps, shops, permanent sub-stations on separate air splits, direct to returns.	114,000	0
		$971,000	$186,000

4.	ELECTRICAL:		
A.	Surface and underground electrical disconnect.	$102,000	$ 2,500
B.	All electrical self propelled equipment retrofit with panic bars.	35,000	1,000
C.	One amp limit frame to frame on electrical equipment.	0	8,000
D.	No more than one temporary splice in any trailing cable for maximum of 24 hours.	37,000	14,200
E.	High voltage circuits must have circuit breaker protection and ground fault protection ahead of entry into mine.	20,000	500
F.	Ground check system required on all high voltage systems.	38,000	1,300
G.	96 volts maximum for ground check circuits on high voltage systems.	4,000	0

H.	40 volts maximum for ground check circuits on low voltage AC systems.	11,000	0
I.	Disconnects required in all branch circuits of high voltage systems.	60,000	1,800
J.	Trolley-Feeder cut-outs approximately 2000 feet intervals and all branch circuits.	6,000	0
K.	Automatic circuit interruption required for ground fault protection on all DC feeders. Calibration and testing required each 6 months; records.	$ 20,000	$ 2,000
L.	Extremely complicated regulations for moving off-track equipment in areas where trolley wires are present.	0	3,000
M.	Low and medium voltage, 3 phase, AC power circuits must have a current limiting neutral ground system, or for stationary equipment wiring must be steel armoured or in rigid steel conduit.	690,000	0
		$1,023,000	$34,300
5.	ROOF SUPPORT		
A.	Temporary support requirement adds one man per section and materials	$ 14,000	$168,000
B.	Added Technical labor - roof support plan.	7,000	7,000
		$ 21,000	$175,000

6.	RESPIRATOR DUST SAMPLING:		
	A. Investment in sampling equipment	14,000	0
	B. Added technical labor.	0	7,000
		$ 14,000	$ 7,000
7.	NOISE SURVEYS		
	A. Added technical labor and outside consultants.	$ 13,000	$ 6,000
8.	MISCELLANEOUS:		
	A. Self-closing shaft gates - top and all landings.	$ 34,000	2,000
	B. Dual brakes required for all locomotives.	120,000	3,000
	C. Automatic couplers required for mine cars.	260,000	0
	D. Trailing locomotive or equivalent required for ascending track grades (grade not specified).	0	60,000
	E. All surface structures within 100 feet of any mine opening must have fire proof exterior construction or shaft provided with fire doors.	27,000	0
	F. Canopies or cabs required on all self-propelled electric face equipment (assume Diesel also).	106,000	10,000
		$547,000	$75,000

Total Estimated Additional Costs If Gypsum Operations Must Comply With Coal Act.	$7,696,000	$952,300*

* Total Annual Expenditures are only for extensions and/or additions to these systems. The annual maintenance costs to keep these systems functional are not included.

Other cost factors, which could only be assessed following in-depth economic study, but which would probably run into millions of additional dollars for the gypsum industry, would have to be considered for the below-listed categories. It is important that you bear in mind that these factors exist because current non-coal standards are not as restrictive due to the lack of fire and explosion hazard in non-coal operations.

ROOF CONTROL: Coal regulations now limit room width to be only 20 feet for bolt supports; only 30 feet with combination support (timbers, metal posts, jacks, etc.)

VENTILATION:

A. Coal regulations require 9000 CFM through the last open cross-cut; minimum quantity to each face 3000 CFM, minimum mean velocity 60 FPM. Line brattice and check curtains will be required in all active faces.

B. All auxillary fans would be required to meet 2-G specs.; automatic disconnect of power to equipment on fan failure would be necessary.

C. Pre-shift examination of all active areas would be required within 3 hours immediately before each shift. Additional examination for methane and ventilation on each shift and weekly would be required.

D. Methane examinations at face at start of each shift and frequently during the shift would be required.

E. Intake air passing abandoned workings could not be used for ventilation of active faces.

F. Abandoned mine areas would have to be ventilated by bleeder systems or the equivalent or sealed.

ELECTRICAL:

A. Permissible electrical (and Diesel) equipment would be required inby the last open cross-cut. Equipment would have to be maintained permissible.

B. Power connections would have to be permissible or kept in intake air.

MISCELLANEOUS: Only permissible explosives and electric blasting caps would be allowed. Number of blast holes would have to be limited to permissible requirement.

Examination of faces for fires after blasting would be required.

EXHIBIT 2

ANSI Z 16.1 Mining Frequency Rate
Non-Metal as Compared to Coal *

Year	All-Non-Metal Accidents	All Coal Accidents	All Non-Metal Fatalities	All Coal Fatalities	Ratio Non-Me Fatali
1960	15.94	24.11	.13	.59	4.54
61	19.96	31.24	.58	1.21	2.09
62	25.75	26.79	.22	.67	3.05
63	22.88	27.31	.61	.84	1.38
64	20.41	37.78	.37	.85	2.30
65	20.85	36.71	.16	.82	5.13
66	20.49	36.64	.40	.55	1.38
67	20.38	35.27	.53	.79	1.49
68	22.85	34.68	.47	.92	1.96
69	24.92	31.26	.25	.48	1.92
1970	19.24	33.86	.53	.55	1.04
71	18.91	37.41	.18	.41	2.27
72	18.04	35.44	.53	.58	1.09
73	18.39	40.89	.29	.48	1.66
74	17.55	29.24	.22	.45	2.05
75	17.45	30.59	.28	.42	1.50
76	14.38	36.41	.26	.34	1.31
				Ratio Average	2.23

* Source: MESA and National Safety Council

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT

PRESENT LAW	PROPOSED CHANGES
SECTION 1	No change
SECTION 2 - DEFINITIONS & EXEMPTIONS	Insert new (e) The term 'Assistant Secretary' means the Assistant Secretary for Metal and Nonmetallic Mine Safety established under Section 6.
(e) The term "Board" means the Federal Metal and Nonmetallic Mine Safety Board of Review created by section 10.	Becomes (f)
SECTION 3	No change
SECTION 4	Becomes SECTION 8
Inspections Sec. 4. The Secretary of the Interior is authorized at any time to cause to be made such inspections and investigations as he shall deem necessary in mines which are subject to this Act (1) for the purpose of obtaining, utilizing, and disseminating information, relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, (2) for the purpose of determining whether or nor there is compliance with a health and safety standard or order issued under this Act, or (3) for the purpose of evaluating the manner in which a State plan approved under section 16 is being carried out. At least once each calendar year the Secretary shall inspect each underground mine which is subject to this Act.	8 (a) **Inspections** Sec. A The Secretary of the Interior is authorized at any time to cause to be made such inspections and investigations as he shall deem necessary in mines which are subject to this Act (1) for the purpose of obtaining, utilizing, and disseminating information, relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, (2) for the purpose of determining whether or nor there is compliance with a health and safety standard or order issued under this Act, or (3) for the purpose of evaluating the manner in which a State plan approved under section 16 is being carried out. At least once each calendar year the Secretary shall inspect each underground mine which is subject to this Act.
NEW	Four times each calendar year, the Secretary shall inspect each mine which is subject to this Act. However, the Secretary may determine that fewer inspections are necessary for any given operations based on that operation's sound safety program, low number of violation notices and good safety record. All mines subject to this Act shall be inspected at least once each year. Additional inspections may be warrented if the frequency and severity of accidents level of compliance, and the extent of health and safety hazards at a particular mine site are such as to warrant greater attention, in the judgement of the Secretary. (b) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection

PRESENT LAW		PROPOSED CHANGES
	NEW	SECTION 8 (changes continued) of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace. (c) Any information obtained by the Secretary, the Secretary of Health, Education, and Welfare, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.
		New SECTION 4: DUTIES Sec. 4(a) Each employer - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; (2) shall comply with mine safety and health standards promulgated under this Act. (b) Each employee shall comply with mine safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.
SECTION 5		Becomes SECTION 9
SECTION 6		Becomes SECTION 5
	NEW	(e)(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines (A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

PRESENT LAW		PROPOSED CHANGES
		SECTION 5 (changes continued) (B) that such emergency standard is necessary to protect employees from such danger. (2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection. (3) Upon publication of such standard in this Federal Register the Secretary shall commence a proceeding
	NEW	in accordance with section 5(b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.
(e) The provisions of subsection (d) of this section shall ot be applicable to any proposed mandatory standard nich has been recommended by an Advisory Committee ppointed pursuant to section 7 of this Act.		(f) The provisions of subsection (d) of this section shall not be applicable to any proposed mandatory standard which has been recommended by an Advisory Committee appointed pursuant to section 7 of this Act.
		New SECTION 6 "ASSISTANT SECRETARY FOR METAL AND NONMETALLIC MINE SAFETY"
		Sec. 6(a) There is established in the Department of the Interior an office of the Assistant Secretary for Metal and Nonmetallic Mine Safety, which shall be filled by appointment by the President, by and with consent of the Senate. (b) Section 5315 of title 5, United Code, is amended by adding at the end thereof the following new paragraph: "(99) Assistant Secretary for Metal and Nonmetallic Mine Safety."

PRESENT LAW

SECTION 7

ADVISORY COMMITTEES

Sec. 7. (a) The Secretary is authorized to establish advisory committees to assist him in the development of health and safety standards for mines which are subject to this Act, and to advise him on other matters relating to health and safety in such mines. Each such advisory committee shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of operators of such mines, and of persons similarly qualified to present the viewpoint of workers in such mines, as well as one or more representatives of mine inspection or safety agencies of the States.

(b) Members appointed to such a committee from private life shall, while serving on business of the committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be paid travel expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expenses Act of 1946 (5 U.S.C., sec. 73b-2).

SECTION 8

FINDINGS AND ORDERS

Sec. 8. (a) If, upon any inspection or investigation of a mine which is subject to this Act, an authorized representative of the Secretary finds that conditions or practices in such mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representative shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the following persons whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from, entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to eliminate the danger described in the order; (2) any public official whose official duties require him to enter such area; or (3) any legal or technical consultant, or any representative of the employees of the mine, who is a certified person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(b) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and there-

PROPOSED CHANGES

SECTION 7 - Changes are:

Sec. 7(a) The Secretary will establish an advisory committee.

DELETE PRESENT (b). Insert:

(b) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

(c) The Assistant Secretary shall furnish to the Committee an executive secretary and such secretarial and other services as are deemed necessary to the conduct of its business.

Becomes SECTION 10 - Changes are:

such mine are such that an imminent danger exists....

to comply with a standard which is applicable to such mine, but that such failure to comply has not created an imminent danger...

PRESENT LAW	PROPOSED CHANGES
SECTION 9	Becomes SECTION 11
SECTION 10	Eliminated (Insert present law Sec. 8)
SECTION 11	Eliminated (Insert present law Sec. 9)
SECTION 12	Remains the same
SECTION 13	SECTION 13:
MANDATORY REPORTING Sec. 13. The Secretary shall require operators of mines which are subject to this Act to submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of accidents, injuries, and occupational diseases, and related data, and the Secretary shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders, or findings, obtained or issued under this Act may be published and released to any interested person, and shall be made available for public inspection.	Remains the same, with the following addition: The Secretary shall, on a regular basis prepare complete, accurate, useful data of benefit to the operators, by utilizing the information submitted in such reports.
SECTION 14	SECTION 14 - Changes are:
PENALTIES Sec. 14. (a) Whenever an operator (1) violates or fails or refuses to comply with any order of withdrawal and debarment issued under section 8 or section 9 of this Act, or (2) interferes with, hinders, or delays the Secretary, or his duly authorized representative, in carrying out his duties under this Act, or (3) refuses to admit an authorized representative of the Secretary to any mine which is subject to this Act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this Act, or of an accident, injury, or occupational disease occurring in or connected with such a mine or (5) being subject to the provisions of section 13 of this Act, refuses to furnish any information or report requested by the Secretary, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the Secretary in the district court of the United States for the district in which the mine in question is located or in which the mine operator has its principal office.	

PRESENT LAW	PROPOSED CHANGES
SECTION 14 (continued)	SECTION 14 (changes continued)
(b) Whoever violates or fails or refuses to comply with an order of withdrawal and debarment issued (1) under subsection (a) of section 8 or (2) under subsection (b) of section 8 if the failure to comply with an order of abatement has created a danger that could cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, shall upon conviction thereof be punished for each such offense by a fine of not less than $100, or more than $3,000, or by imprisonment not to exceed sixty days, or both. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both.	section 8 if the failure to comply with an order of abatement has created an imminent danger that...
	fine of not less than $1,000 or more than $10,000, and imprisonment not to exceed one year.
NEW	In situations when it is found, upon conviction, that an operator or his representative has willfully non-complied with an order to abate, each such offense shall be punishable by a fine of not more than $25,000 or by imprisonment not to exceed one year.
SECTION 15 EDUCATION AND TRAINING Sec. 15. The Secretary shall develop expanded programs for the education and training of employers and employees in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions in mines which are subject to this Act.	SECTION 15 - With the following changes Sec. 15 (a) The Secretary ..... (b) Every operator of a mine subject to this Act shall provide a program of training his employees prior to work assignment as well as after work assignment and instruct his employees regarding known hazards and proper methods for utilizing industrial hygiene control measures which are provided.
SECTION 16	SECTION 16 - With one change:
(c)(2)....inspection at least annually of all such mines other than quarries and sand and gravel pits	(c)(2)....inspection at least annually of all such mines including quarries and sand and gravel pits.

PRESENT LAW	PROPOSED CHANGES
SECTION 17 ADMINISTRATIVE PROVISIONS **Sec. 17.** The Secretary shall provide that the major responsibility for administering the provisions of this Act shall be vested in the Bureau of Mines of the Department of the Interior which has the major responsibility for carrying out the Federal Coal Mine Safety Act. The Secretary acting through the Bureau, shall have authority to appoint, subject to the civil service laws, such officers and employees as he may deem requisite for the administration of this Act; and to prescribe powers, duties, and responsibilities of all officers and employees engaged in the administration of this Act: *Provided, however,* That, to the maximum extent feasible, in the selection of persons for appointment as mine inspectors, no person shall be so selected unless he has the basic qualification of at least five years practical mining experience and in assigning mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to their previous practical experience in the State, district, or region, and in the particular type of mining operation where such inspections are to be made.	SECTION 17 - With the following changes Sec. 17(a) The Secretary..... (b) The Office of Management and Budget shall serve as the arbitrator in any jurisdictional disputes regarding the application of this Act.
SECTIONS 18 - 22	No change.

The CHAIRMAN. Mr. Edward J. Baier, Deputy Director of the National Institute for Occupational Safety and Health is the next witness.

Mr. Baier, we are very pleased to have you with us this morning. We look forward to your testimony. I don't have to make a long speech on the importance we attach to the institute of which you are deputy director.

STATEMENT OF EDWARD J. BAIER, DEPUTY DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTER FOR DISEASE CONTROL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY JAMES A. MERCHANT, DIRECTOR, APPALACHIAN LABORATORY FOR OCCUPATIONAL SAFETY AND HEALTH, AND EARLE P. SHOUB, ASSOCIATE DIRECTOR

Mr. BAIER. Thank you, sir.

The CHAIRMAN. It is vital to our concerns and hopes on safety and health.

Mr. BAIER. Thank you. I appreciate that.

Mr. Chairman, with me this morning is Dr. James Merchant, and Mr. Earle Shoub, Director and Associate Director of the Appalachian Laboratory for Occupational Safety and Health.

Rather than go through our prepared statement, if it could be accepted for the record I would like to highlight some points to conserve time, if that is agreeable with you.

NIOSH operates under several acts. Under the Federal Coal Mine Health and Safety Act of 1969, we conduct health research both on respiratory impairment and on general occupational diseases of coal miners. We assure the availability of medical examinations under that act.

Under the Occupational Safety and Health Act we are concerned both with occupational health and occupational safety.

Under the Coal Act we actually set the health standards at the present time and under the Occupational Safety and Health Act we develop criteria for both health standards and safety standards.

I think one important facet of our testing and certification program is to assure that we have adequate equipment and personal protective devices. Currently, NIOSH has no legislated responsibilities under the Federal Metal and Non-metallic Mine Safety Act.

Our current budget is $48.8 million, of which about 10 percent is directly devoted to coal research. The hazards of mining are complex and it took the British about a century and a half to recognize occupational diseases from the inhalation of coal mine dust. It was not until the 1940's that the British began to define the coal workers' pneumoconiosis. It took even longer to accept this fact in the American bituminous coal as well as the anthracite mines.

Pennsylvania began studies in the late 1950's and the Public Health Service in the early 1960's, which confirmed that there is such a thing as a coal workers' pneumoconiosis. One important thing that NIOSH does provide is its technical assistance to evaluate specific exposures in coal mines. To date, we have investigated problems concerning heat

stress, creosote, the use of asbestos and resins which are used in roof bolting operation.

The health problems of the metal miners are a little bit more complex because we really don't have adequate information on all of the substances that are used in the metal mines. In addition to the pneumoconiosis-producing dusts, there is exposure to a number of carcinogens, and these include asbestos, arsenic, uranium and beryllium.

We also believe that metal miners are more susceptible to malignant and nonmalignant respiratory diseases. For that reason, we would propose that periodic medical examinations be considered for non-coal miners.

Currently when we respond to requests for health hazard evaluations in a smelter, or when we conduct industry-wide studies of metal fumes we do presently have right of authority to enter into the facility.

Any work that we have done in metal mines or stone, clay and gravel quarries and pits has been through agreement with the Department of the Interior.

In our testimony I would like to stress the need for a complete occupational health standard. The current limits adopted in metal mines are really those limits which were set by the American Conference of Governmental Industrial Hygienists, which is simply an environmental number.

We are also concerned with those factors such as, how do you sample to determine exposure? What does the chemist do when the chemist gets that sample? What kind of medical tests should be conducted? There are a lot of things that just aren't included in an environmental number. We favor a comprehensive standard such as we developed in our criteria documents under the Occupational Safety and Health Act.

It takes about 40 weeks to develop a criteria document and we have been producing these at the rate of about 26 per year. If we were asked to tabulate a list of known toxic substances found in metal mines and stone, clay and gravel quarries and pits we would certainly be able to produce that in a reasonable time but, to develop comprehensive standards for each of these might take a little bit of time. I would like to point that out.

Quite frequently we find that we would like to group some of these individual criteria documents into a comprehensive package which would apply to a specific type of mining. We are also concerned about certain safety aspects of mining. I am speaking of human behavioral research, not equipment related safety issues. For instance, how someone behaves which might be a cause of accidents or a series of impacts resulting from mixed exposure to air contaminents resulting at the same time. It could have an impact on the safety program.

So, if we group this into something like human behavioral research I think it would better describe what we are talking about.

Finally, I would like to mention briefly training and manpower development. As you know, traditionally the training of mine inspectors' and technical support personnel has emphasized the injury-producing aspects and all but ignored the illness-producing hazards in mining.

We have worked very closely with the Department of the Interior in their training courses. We have provided faculty for them and text materials. We have also given guest lectures at courses primarily for sampling for gases, vapors, particulates, ventilation type measurements, ionizing and nonionizing radiation and noise measurements and control. So, we work very closely with the academy.

There is one other point, that very few schools that train mining engineers, chemical engineers, physicians or nurses very rarely concentrate on the job safety and health aspects of the profession. This is also true of the chemistry teacher and the biology teacher. They teach how the reactions go but they very rarely teach about the hazards associated with it.

I have gone through this very quickly, Mr. Chairman.

The CHAIRMAN. I regret that we had to. I appreciate your cooperation.

Mr. BAIER. We are ready for any questions you may have. Mr. Chairman and Senator Javits.

The CHAIRMAN. You mentioned in your prepared statement that NIOSH currently has no standard-making role under the Metal Act. You did mention a cooperative relationship; am I right?

Mr. BAIER. That's right.

The CHAIRMAN. But you have, under law, no standard-making role?

Mr. BAIER. HEW has mandated responsibilities under the Coal Mine Act, under the Occupational Safety and Health Act and under the Toxic Substances Control Act. But, it is not mentioned in any way in the present Federal Metal and Non-metallic Mine Safety Act.

The CHAIRMAN. Do you have any formal arrangements?

Mr. BAIER. We have an umbrella agreement with the Department of the Interior and when we wish to study a specific area such as tremolitic talc mining, we must receive right-of-entry authority each time from the Department of the Interior.

The CHAIRMAN. This bill would provide you with the responsibility to suggest standards in metal and nonmetal, right?

Mr. BAIER. Yes.

The CHAIRMAN. But not to actually promulgate health standards?

Mr. BAIER. That is correct.

The CHAIRMAN. Does that put you in the same situation as under the other present safety acts? It puts you in the same position with coal under this bill.

Mr. BAIER. Yes.

The CHAIRMAN. The same situation to do your research, your studies and make suggestions; is that right?

Mr. BAIER. Yes.

The CHAIRMAN. And the standards would be set over there?

Mr. BAIER. Yes.

The CHAIRMAN. How do you people view this? Is this the best way to proceed?

Mr. BAIER. It would give us a role similar to that which we have under the Occupational Safety and Health Act.

The CHAIRMAN. Again, you are not setting standards, you are suggesting standards?

Mr. BAIER. We are recommending standards.

The CHAIRMAN. It would seem to me your special expertise relates to your role under this bill of suggesting standards. There are other considerations that, under law, have to come into the actual promulgation of standards. We feel that this standard recommending function is an appropriate, proper and most desirable responsibility for NIOSH.

Mr. BAIER. We have no problem with that, Senator.

The CHAIRMAN. Senator Javits?

Senator JAVITS. I subscribe to what the Chair has said with respect to the relationship with NIOSH in the setting of standards. I think, of course, your work will be simplified if you deal with the Labor Department, as I hope we will provide for with the passage of this bill. Is NIOSH a very extensive agency? How many people do you employ?

Mr. BAIER. At the present time we have allocations for 950 positions.

Senator JAVITS. Would that be adequate to do the job which you are here describing?

Mr. BAIER. There is one problem; if we are going to be developing criteria documents in a comprehensive package like we do under the Occupational Safety and Health Act, there would be a need for additional resources.

Senator JAVITS. How many? In other words, when we consider this proposal, how many additional operatives do we have to consider at the same time?

Mr. BAIER. Under the Coal Act we have a staff in place. With the additional responsibilities of the metal mines some of the hazards we identified under the Occupational Safety and Health Act apply to metal mining. And whether the exposure of the worker is in the mine or in the factory, so to speak, it would be very similar. We would need some increase in budget and positions.

The Department is currently considering just about what this would be. They will correspond with the chairman as to the departmental recommendations.

Senator JAVITS. All right, will you so advise them we will need within 10 days an estimate from them of the added number of employees and the added cost which will be involved and what transfers will be involved from the Department of the Interior.

Mr. BAIER. Yes.

Senator JAVITS. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I will come over and see you one day, Ed.

Mr. BAIER. Thank you very much.

[The prepared statement of Mr. Baier follows:]

90-465 O - 77 - 19

Statement of

Edward J. Baier, Deputy Director
National Institute for Occupational Safety and Health
Center for Disease Control
Department of Health, Education, and Welfare

Before the
Subcommittee on Labor
Senate Committee on Human Resources

March 31, 1977

Mr. Chairman and Members of the Subcommittee:

I am Edward J. Baier, Deputy Director of the National Institute for Occupational Safety and Health (NIOSH). Before accepting the position as Deputy Director of NIOSH in 1972, I was Director of the Bureau of Mines and Occupational Health and Safety for the Pennsylvania Department of Environmental Resources. Accompanying me today are the Director of our Appalachian Laboratory for Occupational Safety and Health (ALOSH), Dr. James A. Merchant, and the Associate Director, Mr. Earle P. Shoub. We welcome the opportunity to appear before you today to discuss our mine health research and technical assistance programs and to express our support for your efforts to emphasize the importance of protecting the health as well as the safety of the miner in amending existing Federal mine legislation. The Department will be submitting detailed comments on S.717 in a letter to the Chairman.

NIOSH MINING RESPONSIBILITIES

Under the Federal Coal Mine Health and Safety Act of 1969 (Coal Mine Act), NIOSH conducts research directed toward protection of life, and health, detection of respiratory impairment, and prevention of occupational diseases of coal miners. We also establish coal mine health standards and assure the availability of medical examinations for underground coal miners. The Mining Enforcement and Safety Administration (MESA) of the Department of the Interior establishes coal mine safety standards and enforces both health and safety standards. Under the Coal Mine Act, NIOSH has joint regulations with MESA to test and certify respirators and coal mine dust personal samplers. Under

this program, our Testing and Certification Branch conducts all the tests on respirators and personal samplers with the exception of any electrical components. Electrical safety tests are conducted by MESA. Certified equipment receives approval labels both from NIOSH and MESA. Under authority of the Occupational Safety and Health Act of 1970, the Testing and Certification Branch has promulgated independent regulations to test and certify sound level meters and gas detector tubes. As part of our research program under the Occupational Safety and Health Act, NIOSH also tests and reports on a wide variety of other environmental monitoring and personal protective equipment for conformance with OSHA standards and other performance criteria.

Currently, NIOSH has no legislated responsibility under the Federal Metal and Nonmetallic Mine Safety Act (the Metal Mine Act). Over the years, however, NIOSH and its predecessor organizations have conducted considerable research into the health hazards of metal and non-metal mines under authority of the Public Health Service Act. Under the Occupational Safety and Health Act of 1970, our Institute has developed recommended standards which are also applicable to some of the most important health hazards facing workers in metal mines, including noise, asbestos, silica, beryllium, inorganic arsenic, inorganic mercury, carbon monoxide, oxides of nitrogen and phenol.

The total NIOSH budget for fiscal year 1977 is $48.8 million. About $2.1 million of this budget has been allocated to coal mine health research and another $2.1 million for related services to coal miners and mine operators. NIOSH conducts more research on occupational health

problems of coal miners than on any other single occupational group. In addition, about $200,000 was spent on research that could be related to hazards found in metal and non-metal mines.

HEALTH HAZARDS OF MINING

Mining has always been known to be a dangerous occupation from the safety viewpoint, and even today ranks among the highest in incidence and severity of accidents. It is more difficult to get people to see and understand the health hazards of mining. It is almost a century and a half since the British began to recognize that an occupational disease could result from the inhalation of coal mine dust. It was not until the 1940's, however, that the British began to define coal workers' pneumoconiosis as a disease entity distinct from the classic dust disease, silicosis. It took even longer to accept that American bituminous coal as well as anthracite miners suffered from occupationally related chest diseases. Studies conducted by the Pennsylvania Department of Health in the late 1950's and by the Public Health Service in the early 1960's confirmed the existence of widespread pneumoconiosis among American coal workers. In addition to coal workers' pneumoconiosis, coal miners have been shown to suffer more respiratory impairment and disability than the general population. Coal miners also commonly suffer hearing impairment or loss as a result of exposure to excessive noise. The University of Pittsburgh Graduate School of Public Health recently completed a study under contract with NIOSH that examined the cause of death of over 23,000 coal miners. The study shows significant excess deaths from respiratory disease,

accidents, and lung cancer. The study also shows excess deaths from stomach cancer.

We will begin the third round of the National Study of Coal Worker's Pneumoconiosis this fiscal year. The first two national studies were conducted from 1969 to 1971 and 1972 to 1975 in selected mines. Although approximately 10,000 miners in each of these studies were examined by medical teams from our Morgantown laboratory, we had to rely on information previously collected for regulatory purposes to estimate the dust levels to which the miners had been exposed. In the third round, in addition to medically examining the miners, we will also collect dust samples reflecting current coal mine dust levels. The National Study is an important mechanism to monitor the prevalence of disease among coal miners.

NIOSH has also provided technical assistance to evaluate specific exposures in coal mines. At the request of miner representatives, NIOSH has investigated problems of exposure to heat stress, creosote, asbestos, and resins used in roofbolting.

The approximately 260,000 workers in metal and non-metal mines extract about 50 commodities, including copper, mercury, gold, silver, lead, zinc, uranium, and asbestos. These miners are exposed to more than a hundred additional potentially toxic substances and harmful physical agents during mining processes. Adequate information does not exist on the levels at which most of these substances are present in mines.

As a group, workers in metal and non-metal mines and mills are exposed to an even wider range of pneumoconiosis producing dusts than are coal miners. They are also exposed to a number of carcinogens, including asbestos, arsenic, uranium, and beryllium. Because workers in metal and non-metal mines may be particularly susceptible to malignant and non-malignant respiratory diseases, we believe serious consideration should be given to providing them with an opportunity for periodic medical examinations similar to those currently provided coal miners.

In conducting field investigations we have become involved with health problems in metal and non-metal mines. When we respond to a request for a health hazard evaluation of a smelter or conduct industry-wide studies involving metal fumes, we do not presently have right-of-entry authority to investigate the associated mining and milling operations, although the entire workplace may be owned by one company, organized by one union, and contain employees exposed to the same substances. In these situations, we have attempted to work cooperatively with the other agencies involved, since the health problems of the workers supersede the jurisdictional boundaries.

COMPLETE OCCUPATIONAL HEALTH STANDARDS

Health research conducted by the Bureau of Mines has been directed primarily toward respirable dust suppression and control, radiation, noise, and noxious gases. Health standards for metal and non-metal mines promulgated by the Department of the Interior include standards for asbestos, radiation, and noise. In addition, the Bureau of Mines has adopted by regulation the threshold limit values for more than 500

toxic substances developed by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1972. Enforcement of these threshold limit values is difficult since only about one-fourth of the substances are found in metal and non-metal mines and since the levels are not accompanied by reliable methods for environmental and biologic sampling and analysis, medical monitoring, work practices and recordkeeping requirements we feel are necessary for complete occupational health standards.

We believe mine operators would find it helpful to have a standardized plan to assure that their health-related responsibilities are fulfilled. If NIOSH were to develop recommended standards for metal and non-metal mines we would first develop a list of potentially harmful chemical substances and physical agents found in mines. We would then establish priorities for standards development based on estimates of numbers of workers exposed, the severity of their exposure and an evaluation of the toxicity or carcinogenicity of the substance. In many cases, we would consider grouping health hazards found in a certain type of mine. We could then issue one document for all relevant health hazards likely to be found in that class of mining operation. Information on some hazards, such as noise, silica, extremes of temperature, and (in the West) radon daughters would be applicable to most mining operations. Other exposures would be specific to one type of mining. We believe it would be most useful to mine operators to take into account the full range of potential exposures in furnishing their workers with a place of employment free from recognized hazards.

NIOSH currently requires approximately 40 weeks to develop a criteria document and transmits about 24 such documents a year to the Department of Labor under the Occupational Safety and Health Act. Since NIOSH has not previously been given specific statutory authority for the development of recommended health standards for metal and non-metal mines, the initial criteria development process would probably be longer than 40 weeks. After a priority list is established NIOSH could develop a schedule for criteria document development.

RELATIONSHIP BETWEEN HEALTH AND SAFETY

In separating mine health research from mine safety research, it is important not to overlook those aspects of human behavioral research that have important implications for job safety. The Institute has been conducting limited research in the area of human behavioral factors affecting job safety. The recently established safety initiative within NIOSH has brought these and other safety research projects into a single organizational entity. Human behavioral factors which we are seeking to link to job safety are effects of shift work, bio-mechanical factors, and the role of the first line supervisor. Other research has already established that job stress is a hazard that can make workers ill, less productive, and more accident prone. Since safety is such an important factor in mining, we feel that the miner would benefit from the results of these and related studies.

COOPERATIVE RESEARCH

NIOSH has a Memorandum of Understanding with MESA that provides an umbrella under which the two agencies coordinate a number of research

projects. Among these projects are three related studies on the health effects of exposure to diesel engine exhaust.

One study involves the examination of over 5,000 workers in metal and non-metal mines to determine whether there are biological effects associated with underground exposure to silica and diesel emissions. MESA is collecting environmental samples for this study. This is an important area because of the long-standing problem from silica exposure and the increasing use of diesel engines underground. The second study is evaluating the use of diesel powered engines in underground coal mines to determine if there are any additional biological effects on the respiratory system of miners who are simultaneously exposed both to coal mine dust and diesel emissions.

A third study is comparing the death rates among workers in metal mines who were exposed to diesel-powered equipment with those who worked only with electric-powered equipment. Presently there are fewer than 25 coal mines in the United States that use diesel-powered equipment and only about half a dozen use such equipment in the face area. NIOSH has been opposed to the introduction of additional diesel-powered equipment in coal mines until the results of these and other studies provide sufficient information on health effects of diesel emissions.

Under an interagency agreement with the Environmental Protection Agency, NIOSH conducts energy research that is applicable to metal and nonmetal mines. Among the projects on occupational hazards associated with energy is a mortality and morbidity study of former oil shale workers to evaluate the health problems involved in shale oil

extraction. We are also developing gas and vapor monitors, a portable microwave spectrometer, and a fibrous aerosol monitor that will be useful in evaluating mine exposures as well as other workplace environments.

TRAINING AND MANPOWER DEVELOPMENT

Traditionally the training of mine inspectors and technical support personnel has emphasized injury producing hazards and all but ignored the illness producing hazards of mining. We have been working with the Department of the Interior to provide additional health training by accepting their training or inspection personnel into our regularly scheduled courses or by giving courses specifically tailored to their needs. These include courses on sampling for gases, vapors and particulates, ventilation principles and measurements, ionizing and nonionizing radiation, and noise effects and control. In addition, we provide the Mine Safety and Health Academy of the Department of the Interior with instructors, training materials, and other assistance in the development of their health training programs.

There is also a need to develop courses in universities and other educational institutions directed toward developing occupational health physicians and nurses, industrial hygienists, and safety engineers with knowledge of the health and safety hazards of mining.

Mr. Chairman, I will be pleased to answer any questions you or Members of the Subcommittee may have.

The CHAIRMAN. The Oil, Chemical and Atomic Workers International Union, Mr. Anthony Mazzocchi, legislative director, and Steven Wodka, international representative.

One of your members is missing. Are you alone?

Mr. WODKA. Mr. Mazzocchi will not be able to be a witness today. I will be delivering the statement.

The CHAIRMAN. Fine.

STATEMENT OF STEVEN WODKA, INTERNATIONAL REPRESENTATIVE, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION

Mr. WODKA. I intend to summarize the statement orally and submit the written statement for the record.

The OCAW represents several thousand miners of various ores throughout the United States. All of these miners are covered by the Federal Metal and Nonmetallic Mine Safety Act of 1966. Their experience has been dismal. They have little or no faith that MESA will protect them. They have none of the basic rights that workers have under OSHA.

For example, these miners are not afforded a formal complaint procedure, prohibition against advance notice, walk-around rights, nor a responsive standard setting procedure. The failure of the current law to protect the miners is best illustrated by the experience of our OCAW local at the Grants, N. Mex. uranium mine of the Kerr-McGee Nuclear Corporation.

These miners face all of the safety hazards of other miners but also a severe radiation hazard. When uranium is mined, radon daughters gas is released. Since 1937, it has been known that radon daughters cause long cancer in man. The risk of uranium miners developing lung cancer is 7 times greater than normal.

By 1969 it was estimated there would be 600 to 1,100 excess cancer deaths among uranium miners in the Western United States. Today, that figure is seen as quite conservative.

The current MESA standard for permissible exposure to radon daughters is four working level months per year. NIOSH researchers have already shown that this level will not protect a miner against cancer and is too high. Their figures show that a miner exposed at 4 working level months for 30 years increases his chances of contracting cancer by 45 percent.

But at the Kerr-McGee Grants mine, even this nonprotective standard is not even being met. For example, repeated MESA inspections, every few months from November 1975 to August 1976, showed that the permissible daily radiation level was being exceeded up to 6½ times over the allowable level.

Further, keep in mind that these MESA violations were found after advance notice had been given of the pending inspection, after ventilation units were turned on and high exposure areas chained off and, of course, without walkaround rights by the union representative.

In essence, MESA's enforcement of the standard is so meaningless that mining operators like Kerr-McGee are free to violate the law. In every instance where MESA found excessive radiation exposure at

Kerr-McGee, it issued orders but never fines nor instituted court action to make sure that the violation was never repeated again.

S. 717 is an excellent bill, and if properly administered it will rectify this situation. We strongly support the bill's provisions for transferring mine safety to the Labor Department. Other important provisions of the bill are: first, entitlement of miners during walkarounds, in transfers after medical exams, and during mine closures; second, the adjudication of discrimination complaints before the review commission; and third, elimination of State plans.

We do have one request to make of you that is very important to our union. Under section 102(b)(3) of the proposed act, uranium milling is exempted and left under the Atomic Energy Act of 1954. We want these workers included under S. 717.

At the Grants uranium mine the Nuclear Regulatory Commission, which enforces the pertinent provisions of the Atomic Energy Act, has ceded its authority over the mill to the New Mexico State radiation program. This State plan has no complaint procedure, no walkaround rights, and no protection against discrimination. There is no administrative enforcement procedure. The State must go to the courts.

Worse yet are the working conditions at the mill. In fact, our local feels that the conditions at the mill are worse than those in the mine. There is extensive exposure to heavy acid fumes and radioactive dust. An NRC regulation that workers be provided with shower facilities and a change of clothing is not enforced. Consequently, the workers are forced to drive home and enter the community while they are contaminated with radioactive dust.

In short, the conditions at the mill are horrendous. The NRC and the State of New Mexico could care less about these workers. Thus, we strongly urge that uranium mill workers be included under this landmark piece of legislation.

I thank you very much.

Senator JAVITS. Mr. Chairman, if I may be heard on this matter. We are considering the reorganization with respect to energy in the Governmental Affairs Committee. I will undertake to try to bring about some rationalization of this situation; that is, use my best efforts to coordinate the coverage of the two bills, this one pending before us and the bill pending on energy reorganization.

It may be this is a kind of situation that could fall between two stools, and I will try to avoid that, Mr. Chairman, by coordination between the two committees.

The CHAIRMAN. This certainly indicates that there should be an effort in coordination. Are you familiar with section 102(b)(3), under which uranium milling is exempt and left under the Atomic Energy Act of 1954?

Mr. WODKA. I have read the bill.

The CHAIRMAN. Is this a classic situation like you just raised? We do have a differentiation in mine-related activities between the coverage of this bill and at OSHA. In this particular case we have the Atomic Energy Act. We haven't related all mining-related activities to this legislation, but at least some of it is within a similar responsibility of the Labor Department, in OSHA.

Mr. WODKA. There is no OSHA coverage for these mill workers now at all. They don't even have OSHA coverage either.

The CHAIRMAN. I appreciate that. Even under our bill, we don't move in the right direction for these workers.

Mr. WODKA. That's correct, they are left out right now.

The CHAIRMAN. We appreciate your being here representing Mr. Mazzocchi. We are sorry he couldn't join us at this time. You have helped us develop knowledge of what is missing in our bill—the developing of standards for people in mills, of course.

Thank you.

Mr. WODKA. Thank you very much.

Senator JAVITS. Thank you very much. We will try to see what we can do.

Mr. WODKA. We appreciate that.

[The prepared statement of Mr. Mazzocchi and Mr. Wodka follows:]

STATEMENT OF
ANTHONY MAZZOCCHI, LEGISLATIVE DIRECTOR
AND
STEVEN WODKA, INTERNATIONAL REPRESENTATIVE
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION
ON
S. 717 - FEDERAL MINE SAFETY AND HEALTH ACT OF 1977
BEFORE THE
SUBCOMMITTEE ON LABOR OF THE
SENATE COMMITTEE ON HUMAN RESOURCES

March 31, 1977

The Oil, Chemical and Atomic Workers International Union represents several thousand miners throughout the United States. We represent miners of lead, silver, zinc, molybdenum, tungsten, gypsum, rock salt, barite, bentonite and uranium. We also represent workers at sand and gravel pits and rock quarries.

The lack of protection on the job for these workers is frightening. The Federal Metal and Nonmetallic Mine Safety Act of 1966 is archaic and totally outmoded. Our members have little or no faith that MESA will protect them. We have heard that MESA feels that it now has a more agressive enforcement posture. Our members report that nothing has changed.

S. 717, The Federal Mine Safety and Health Act of 1977 is desperately needed to correct this situation.

Our office has been working closely in the past year with one mining local on their health and safety problems. Their experience points up the need for S. 717.

The local represents about 800 miners at the Kerr-McGee Nuclear Corporation uranium mine near Grants, New Mexico. These miners face all of the safety hazards of other miners but also a severe radiation hazard. When uranium is mined, radon daughters gas is released. Since 1937, it has been known that radon daughters cause lung cancer in

man. The risk of uranium miners developing lung cancer is seven times greater than normal.

By 1969 it was estimated that there would be 600 to 1100 excess cancer deaths among uranium miners in the Western United States. Today, that figure is seen as quite conservative.

The current MESA standard for permissible exposure to radon daughters is 4 working level months (WLM) per year. NIOSH researchers have already shown that this level will not protect a miner against cancer and is too high. Their figures show that a miner exposed at 4 WLM for 30 years increases his chances of contracting cancer by 45%.

But at the Kerr-McGee Grants mine, even this nonprotective standard is not even being met. For example, repeated MESA inspections, every few months from November, 1975 to August, 1976, showed that the permissible daily radiation level was being exceeded up to 6.5 times over the allowable level.

Further, keep in mind that these MESA violations were found after advance notice had been given of the pending inspection, after ventilation units were turned on and high exposure areas chained off and without walkaround rights by the union representative.

To us this indicates that Kerr-McGee has a blatant disregard for the health of its workers and for the law that is supposed to protect its miners. Kerr-McGee's disregard for the law is easy to understand in the context of MESA's ineffective enforcement action. In every instance where excessive radiation was found, MESA issued orders but never fines or court action to make sure the violation never happened again.

In short, MESA's enforcement of the radiation exposure standard is so meaningless that mining companies like Kerr-McGee have little to fear by violating the law.

S. 717's excellent provisions for complaint inspections, walkaround rights for employee representatives, and for penalties and mine closure will, we hope, rectify this lawless situation.

Further, MESA's underground radiation standard would fail to meet the criteria of S. 717 which requires standards that "must adequately assure on the basis of the best available evidence that no miner will suffer any material impairment of health or functional capacity."

The MESA underground radiation standard also fails to provide for medical examinations on a regular basis. S. 717 would provide this along with protection of earnings if transfer is necessary, a provision which we support as very important.

Workers at Grants also experience difficulty in gaining access to medical records and monitoring data, two other areas that S. 717 would correct.

Other provisions of S. 717 that we would like to highlight are:

1) Placing adjudication of discrimination complaints with the Review Commission. Under OSHA, the Federal courts have been notoriously slow and unresponsive to such lawsuits.

2) Entitlement of miners - A worker should not have to pay with his health and his paycheck for the mistakes and negligence of his employer.

3) Elimination of state plans - The states have proven once again that they simply can't do the job.

There are, however, a few areas where S.717 could be improved.

First, under Section 102 (b)(3) uranium milling is exempted and left under the Atomic Energy Act of 1954. We strongly disagree with this approach.

At the Grants uranium mine, the Nuclear Regulatory Commission has ceded its authority over the mill to the New Mexico State Radiation Program. This state plan has no complaint procedure, no walkaround rights and no protection against discrimination. There is no administrative enforcement procedure. The state must go to the courts.

Worse yet are the working conditions at the mill. In fact, our local feels that the conditions at the mill are worse than those in the mine. There is extensive exposure to heavy acid fumes and radioactive dust. An NRC regulation that workers be provided with shower facilities and a change of clothing is not enforced. Consequently the workers are forced to drive home and enter the community while they are contaminated with radioactive dust.

By continuing to exempt those mill workers from the provisions of S. 717 will only allow these conditions to continue. Thus we strongly urge that uranium mill workers be included under the coverage of S. 717.

Another problem with S. 717 is the lack of an overall cap on the amount of time for standards promulgation. A gap in the standards setting schedule occurs in Section 102(a)(3) where there is no time limit set on the scheduling of hearings after a standard is first proposed and comments received.

It is at this very point in time where OSHA has taken the opportunity to delay standards the most. For example, in October and November, 1975, OSHA proposed seven health standards. It was only this month, on March 15th, that the first hearing was held on this series of standards and that was on lead. We would suggest no more than 60 days be allowed between the end of the comment period and the start of the hearing.

Also a provision needs to be added to prohibit bad faith contests by employers of

citations and orders to the Review Commission. Bad faith contests are those that are simply to buy time or avoid penalties. Such bad faith contests have severely tied up the Occupational Safety and Health Review Commission.

Lastly, the issue of economic feasibility and the usage of economic impact analysis needs to be explicitly addressed in the statute. Our reading of S. 717 indicates to us, as does similar language under OSHA, that only technological feasibility can be considered in the standards development process. Yet the past Assistant Secretary of Labor for OSHA as well as the Ford Administration construed such language to include economic feasibility. As a result, they began the illegal program of inflation impact statements for OSHA standards which severely delayed promulgation of badly needed health standards.

The Carter Administration has proposed a more elaborate system under the heading of economic impact analyses.

Congress must make it explicit in this statute that a dollar value can not be placed on workers' lives, that only technological feasibility can be considered, and that economic analyses can not delay the promulgation of standards.

S. 717 with the improvements that we have proposed, is a landmark piece of legislation that we will strongly support. For far too long, miners have paid with their lives in order to make a living. It is thus incumbent upon Congress to pass this legislation in this session.

The CHAIRMAN. The Association of Bituminous Contractors, Elmo J. Hurst, Donald Rosenthal and William H. Howe.

Senator JAVITS. I wish to note Mr. Rosenthal was formerly assistant to the minority counsel for the Labor Subcommittee. We are glad to welcome you.

STATEMENT OF ELMO HURST, PRESIDENT, THE ASSOCIATION OF BITUMINOUS CONTRACTORS; FRANCIS COLEMAN, GENERAL COUNSEL; DONALD ROSENTHAL, ASSOCIATE COUNSEL; AND WILLIAM H. HOWE, ASSOCIATE COUNSEL, A PANEL

Mr. HURST. We have one additional member with us, Mr. Francis Coleman, who is the General Counsel for our association. Mr. Howe and Mr. Rosenthal are Associate Counsels for the association.

In addition to being President of the Association of Bituminous Contractors I am also President of J. O. Lively Construction Co. engaged in the construction of coal mine plants and facilities.

The Association of Bituminous Contractors is an association of 350 independent and general contractors who perform various types of construction work for coal company customers. In addition to performing construction work for coal company customers, almost all of the association's members also perform construction work for industries other than coal.

It is important to note at the outset that the association's members are not in the business of mining and producing coal, but that the association's members are in the business of building and constructing facilities which will be used by coal companies to mine and process coal.

Likewise, the employees who work for the association's members are not employed to mine coal, but are employed—as construction workers—to build coal mine facilities and the various structures, such as preparation plants, which comprise modern coal mines.

Simply put, the contractors who make up the membership of the Association of Bituminous Contractors are members of the construction industry—not part of the mining industry—and what they have in common which leads them to associate under the term "bituminous contractors" is merely the fact that they sometimes perform work for coal company customers.

At present, the Coal Mine Health and Safety Act, and the various health and safety standards which have been issued to regulate coal mining, are being applied to construction projects which contractors—such as members of the Association of Bituminous Contractors—perform for coal company customers.

Furthermore, the act and these standards are being applied to construction without any recognition of the very real and substantial differences which exist between coal mining and construction. This has created great and unnecessary hardships for the segment of the construction industry which builds coal mines—both contractors and construction workers alike.

The imposition of coal mine standards on construction—by mine inspectors who are totally unfamiliar with the construction industry and health and safety problems in the construction industry—does not enhance the health and safety of construction workers. If anything, it

is a great disservice to these employees because emphasis is mistakenly placed on irrelevant coal mine standards, and real safety problems pertinent to construction are overlooked and ignored. Thus, construction workers are denied protection which relevant construction standards would afford.

At the same time, the contractors who employ these workers are forced to expend time and money trying to comply with coal mine standards which do nothing to further the safety of their construction employees. The cost of new mines is increased, and the completion of mine facilities is needlessly delayed.

The association has prepared a short booklet entitled, Construction of a Coal Mine, which illustrates the nature of the construction work which the association's members perform for coal company customers. You have a copy of this booklet before you.

More than can be explained in words, the pictures in this booklet demonstrate that construction work—performed at coal mines—is not the same as mining coal—and deserves separate treatment. Pouring concrete, erecting steel, installing electrical wire, and fitting machinery are not the same as mining coal. Contractors employ carpenters, ironworkers, welders, pipefitters, and electricians. Contractors do not employ coal miners.

Some of the consequences of applying coal standards to construction are indeed bizarre. There have been instances where MESA has required dust samplers to be worn by ironworkers hanging steel ten stories up in clean air, or by laborers working to build foundations in a foot of mud—and there have been instances where contractors have had to test for gas out in open fields before they could operate bulldozers to build roads into a mine site.

Although these may be some of the more dramatic examples of why coal mine standards do not fit the needs of the construction industry, and only impose useless burdens and expense, we believe that they typify our concerns.

The association and its members have tried to rectify some of the problems by going to MESA and trying to persuade MESA to take a realistic approach toward construction. So far, however, our efforts have not produced any meaningful results. We have commented on various standards which MESA has proposed, but although MESA acknowledges that there are differences between construction and mining, these differences are not recognized in the form of separate standards and regulations which will serve the needs of construction workers and contractors.

In May 1975, we proposed to MESA that a separate set of regulations be adopted for construction, and, at the encouragement of MESA, proposed the types of standards which we considered relevant to the types of work performed by the construction industry. So far—almost 2 years later—we still have no response from MESA.

We strongly urge the adoption of amendments to S. 717 which will compel the adoption of health and safety standards which are meaningful to the type of work performed by construction contractors. Likewise, provision should be made to assure that inspectors and compliance officers who inspect construction projects are knowledgeable in construction work.

The association has no quarrel with health and safety regulations as a means to help safeguard workers, but if construction projects are to be regulated under the Mine Health and Safety Act, the act should recognize that construction is a different industry than mining and should provide for and compel the promulgation of health and safety standards which are relevant to the construction industry.

A review of accidents and injuries reported to the association by its members in 1976 indicates that the problems encountered are typical of the construction industry—not the mining industry.

In 1976, 1,009 injuries were reported to the association purusant to the terms of a collective bargaining agreement. Of these injuries, hand and finegr injuries, slip or fall injuries, and material handling injuries were the most common. The common underground hazards caused by falling materials, fire or explosion were almost nonexistent. Only one injury due to fire was reported, and only one injury due to explosion.

In construction, working at heights is one of the areas of greatest concern, and MESA is not equipped at present to deal with this problem.

The hundreds of contractors and thousands of construction workers who build and construct the Nation's mines deserve to be treated under relevant regulation, and Congress should take this opportunity to see to it that the construction community is not short-changed.

The CHAIRMAN. What is the ideal situation? You have gotten no relief from MESA; is that right?

Mr. HURST. The regulations that MESA has promulgated are geared to mining coal. They have not promulgated regulations that are geared to construction work, as OSHA has in the Labor Department. Consequently, we feel the inspectors and MESA people do not know what they are doing when they are on our jobs.

Most of the things that they make us do are totally irrelevant and add nothing to the safety of the project.

The CHAIRMAN. I am looking at your booklet and it is descriptive of classical above-ground construction. Except for a conveyor going to some of the scaffolded areas, you wouldn't know that this is a coal mine and that the construction is in connection with it.

Mr. HURST. It could be a powerplant or an industrial plant.

The CHAIRMAN. So I see your point. I know that there is a great deal of standard setting for the coal-mining operation that obviously is irrelevant to much of this, and that is basically your point, isn't it?

Mr. HURST. That's our point. We say that MESA, in this bill, should be compelled to draft meaningful regulations concerning construction work.

The CHAIRMAN. This will not, if our bill becomes law, be an Interior Department responsibility. Mines, coal and metal, will be in the Labor Department. It would seem to me then that within Labor, will be responsibility for all industrial safety and health. I would believe with all the knowledege and all the legislative mandate to create standards and enforce them within this one department they will have the intelligence to have standards that apply specifically to the job.

Until this construction project becomes an operating part of the coal mine, you don't even see any coal, you don't have any dust, you don't have the major hazards that are associated with the mining of the coal.

You make a good point and I think we are in a position here with this legislation to bring a greater assurance to industry, whatever part of industry it is, that we will have the right answer for safety and health for the job. That is the way it looks for me.

Mr. HURST. One more remark, Senator. There already exists in the Labor Department, under the Occupational Safety and Health Administration, about 99 percent of the safety rules and regulations that are required to govern what we are doing. If we put MESA over there and they say, OK, MESA, now you have to draw up a set, then we have two.

The CHAIRMAN. I could be way off on this but, it would just seem the most reasonable and logical thing that, while there will be two operations within the department, if they don't communicate and cross fertilize their needs and experience and knowledge, why, they are crazy.

Mr. HURST. Practically all of our member companies do construction work outside of the coal industry and when they are outside of the coal industry they are operating under the Occupational Safety and Health Administration. It is only when we are on coal mine lands and property that MESA takes jurisdiction and really doesn't know what they are doing.

The CHAIRMAN. You made that abundantly clear. You know what you are talking about. You raised a situation here that will require our best efforts to make sure that the legislative framework recognizes the need for logic in this particular aspect.

Mr. HURST. Thank you. That's all we are asking.

The CHAIRMAN. You have done it.

Senator Javits?

Senator JAVITS. No questions. Thank you very much.

[The prepared statement of the Association of Bituminous Contractor follows:]

STATEMENT OF THE ASSOCIATION OF BITUMINOUS CONTRACTORS ON S. 717

HUMAN RESOURCES COMMITTEE

MARCH 31, 1977

STATEMENT OF THE ASSOCIATION OF
BITUMINOUS CONTRACTORS ON S. 717

The Association of Bituminous Contractors is an association of 350 independent and general contractors who perform various types of construction work for coal company customers. In addition to performing construction work for coal company customers, almost all of the Association's members also perform construction work for industries other than coal.

It is important to note at the outset that the Association's members are not in the business of mining and producing coal, but that the Association's members are in the business of building and constructing facilities which will be used by coal companies to mine and process coal. Likewise, the employees who work for the Association's members are not employed to mine coal, but are employed--as construction workers--to build coal mine facilities and the various structures, such as preparation plants, which comprise modern coal mines.

Simply put, the contractors who make up the membership of the Association of Bituminous Contractors are members of the construction industry--not part of the mining industry--and what they have in common which leads them to associate under the term "bituminous contractors" is merely the fact that they sometimes perform work for coal company customers.

At present, the Coal Mine Health and Safety Act, and the various health and safety standards which have been issued to regulate coal mining, are being applied to construction projects which contractors--such as members of the Association of Bituminous Contractors--perform for coal company customers. Furthermore, the Act and these standards are being applied to construction without any recognition of the very real and substantial differences which exist between coal mining and construction. This has created great and unnecessary hardships for the segment of the construction industry which builds coal mines--both contractors and construction workers alike.

The imposition of coal mine standards on construction--by mine inspectors who are totally unfamiliar with the construction industry and health and safety problems in the construction industry--does not enhance the health and safety of construction workers. If anything, it is a great disservice to these employees because emphasis is mistakenly placed on irrelevant coal mine standards, and real safety problems pertinent to construction are overlooked and ignored. Thus, construction workers are denied protection which relevant construction standards would afford.

At the same time, the contractors who employ these workers are forced to expend time and money trying to comply with coal mine standards which do nothing to further the safety of their construction employees. The cost of new mines is increased, and the completion of mine facilities is needlessly delayed.

The Association has prepared a short booklet entitled, "Construction of a Coal Mine", which illustrates the nature of the construction work which the Association's members perform for coal company customers. You have a copy of this booklet before you. More than can be explained in words, the pictures in this booklet demonstrate that construction work--performed at coal mines--is not the same as mining coal--and deserves separate treatment. Pouring concrete, erecting steel, installing electrical wire, and fitting machinery are not the same as mining coal. Contractors employ carpenters, ironworkers, welders, pipefitters, and electricians. Contractors do not employ coal miners.

Some of the consequences of applying coal standards to construction are indeed bizarre. There have been instances where MESA has required dust samplers to be worn by ironworkers hanging steel ten stories up in clean air, or by laborers working to build foundations in a foot of mud--and there have been instances where contractors have had to test for gas out in open fields before they could operate bulldozers to build roads into a mine site. Although these may be some of the more dramatic examples of why coal mine standards do not fit the needs of the construction industry, and only impose useless burdens and expense, we believe that they typify our concerns.

The Association and its members have tried to rectify some of the problems by going to MESA and trying to persuade MESA to

take a realistic approach toward construction. So far, however, our efforts have not produced any meaningful results. We have commented on various standards which MESA has proposed, but although MESA acknowledges that there are differences between construction and mining, these differences are not recognized in the form of separate standards and regulations which will serve the needs of construction workers and contractors.

In May, 1975, we proposed to MESA that a separate set of regulations be adopted for construction, and, at the encouragement of MESA, proposed the types of standards which we considered relevant to the types of work performed by the construction industry. So far--almost two years later--we still have no response from MESA.

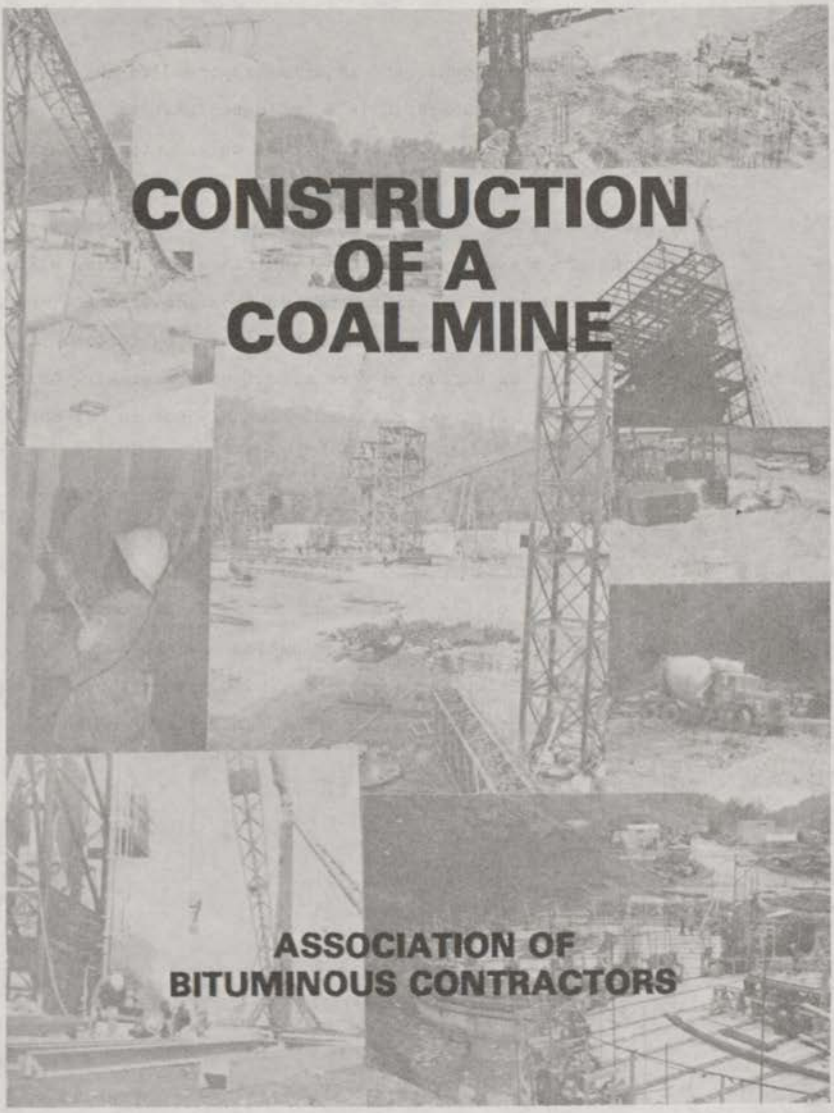
We strongly urge the adoption of amendments to S. 717 which will compel the adoption of health and safety standards which are meaningful to the type of work performed by construction contractors. Likewise, provision should be made to assure that inspectors and compliance officers who inspect construction projects are knowledgeable in construction work.

The Association has no quarrel with health and safety regulations as a means to help safeguard workers, but if construction projects are to be regulated under the Mine Health and Safety Act, the Act should recognize that construction is a different industry than mining and should provide for and compel the promulgation of health and safety standards which are relevant to the construction industry.

A review of accidents and injuries reported to the Association by its members in 1976 indicates that the problems encountered are typical of the construction industry--not the mining industry. In 1976, 1,009 injuries were reported to the Association pursuant to the terms of a collective bargaining agreement. Of these injuries, hand and finger injuries, slip or fall injuries, and material handling injuries were the most common. The common underground hazards caused by falling materials, fire, or explosion were almost non-existent. Only one injury due to fire was reported, and only one injury due to explosion.

In construction, working at heights is one of the areas of greatest concern, and MESA is not equipped at present to deal with this problem.

The hundreds of contractors and thousands of construction workers who build and construct the nation's mines deserve to be treated under relevant regulation, and Congress should take this opportunity to see to it that the construction community is not short-changed.


CONSTRUCTION
OF A
COAL MINE
ASSOCIATION OF
BITUMINOUS CONTRACTORS

CONSTRUCTION OF A COAL MINE

by

Association of Bituminous Contractors

A coal mine consists of, among other things, a number of structures and facilities which are used to remove the coal from the earth and prepare it for use as a fuel or some other commercial use. Such structures and facilities include shafts and slopes (in the case of underground mines); draglines and shovels (in the case of surface mines); preparation plants; storage, handling, and loading facilities; and a host of ancillary items such as office buildings, roads, parking lots, and bathhouses.

Coal mine companies (operators) and their employees (miners) use the structures and items which constitute coal mines to mine and process coal. Coal mine operators and miners do not, however, build the structures and facilities which constitute coal mines. Coal mines and coal mine facilities, like other industrial facilities, are usually built by independent construction contractors.

Construction contractors are not coal mine operators, and the construction workers employed by contractors are not coal miners. The mere fact that contractors happen to build coal mines and coal mine facilities does not mean they are coal mine operators. The Mining Enforcement and Safety Administration (MESA) has sometimes failed to make this distinction.

The Association of Bituminous Contractors is an association of construction contractors who build coal mines and coal mine related facilities for coal company customers. The Association and its members strongly urge that they *not* be considered in the same category as coal mine companies as far as health and safety legislation is concerned. Health and safety problems in the construction industry are quite different than in the coal mine industry, and require different solutions. Lumping construction together with coal mining for purposes of health and safety regulation results in great injustice to both the construction contractors and their employees, and may, in fact, result in increased exposure to potential health and safety hazards for construction workers.

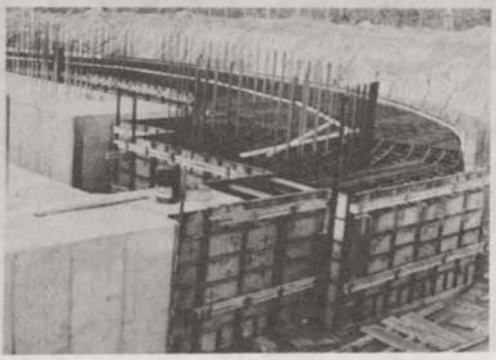
The purpose of this booklet is to show that the construction of coal mines and coal mine related facilities is no different than the construction of other types of industrial facilities, and that construction is totally different than the mining of coal. Contractors who build coal mines should not be subject to the same regulations which are applied to the mining industry. Several important facts should be kept in mind:

- Contractors who build coal mines are part of the construction industry.
- Coal mine construction is no different than other types of industrial construction.
- Most contractors who build coal mines also perform construction work for other types of industrial customers.
- Most employees who work at coal mine construction projects also work at construction projects for other types of customers. Construction workers are transient and move from job to job – both on and off coal property.
- The same skills, tools, and techniques are used to build coal mines as are used to build other types of facilities.

Before preparation plant facilities can be constructed, it is necessary to gain access to and clear the site. Contractors, using road grading equipment, bulldozers, and trucks, build roads into the site, and clear the site so that construction can begin.

Sometimes ground conditions require piles to be driven before construction of a preparation plant can begin.

Foundations are poured using concrete form construction. Carpenters build wood forms. Steel reinforcing bar is placed in the forms. Finally, concrete is poured into the forms, which are then stripped away by laborers after the concrete has "set."



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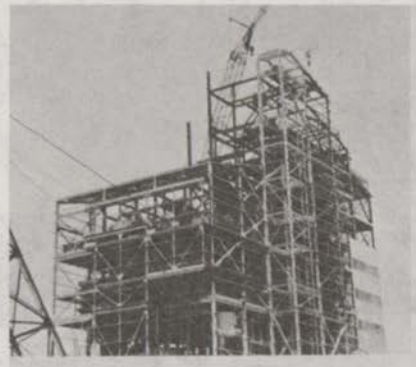
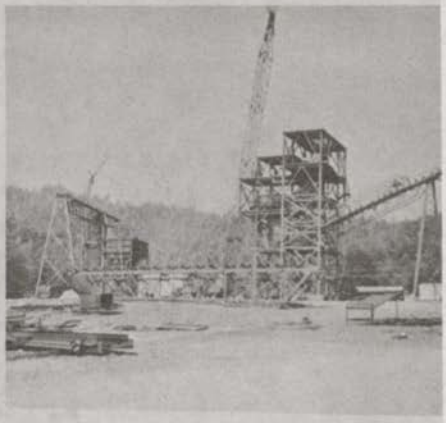
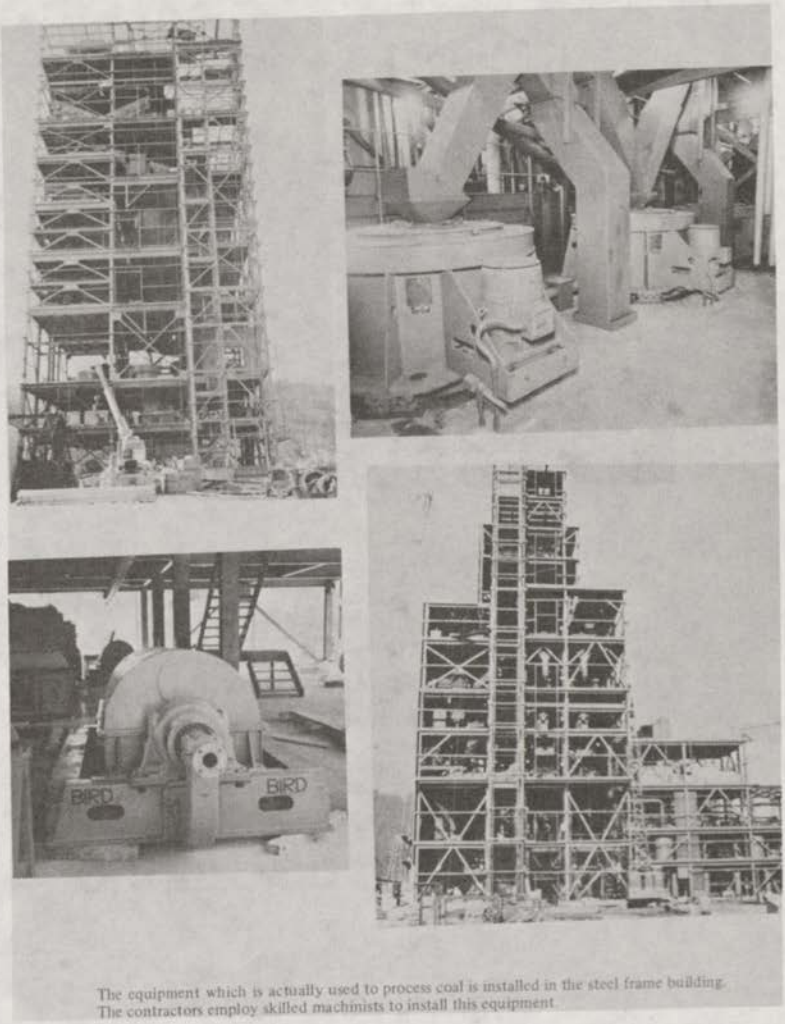
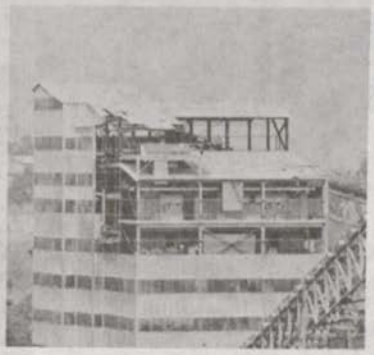




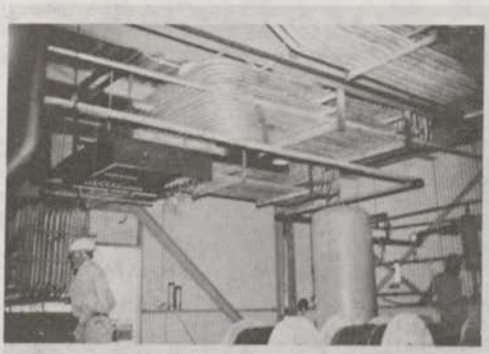
Most modern coal preparation plants consist of a steel frame over which sheet metal is placed. Construction cranes lift the steel into place. Skilled ironworkers connect the steel in place, and "bolt-up" men then follow along to install additional bolts.



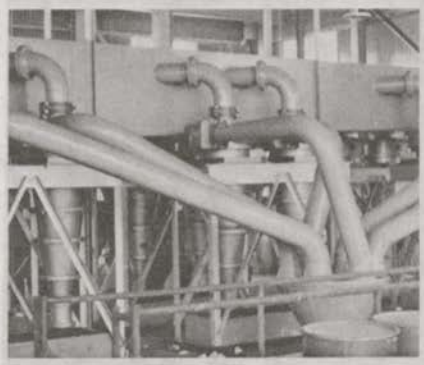
The equipment which is actually used to process coal is installed in the steel frame building. The contractors employ skilled machinists to install this equipment.

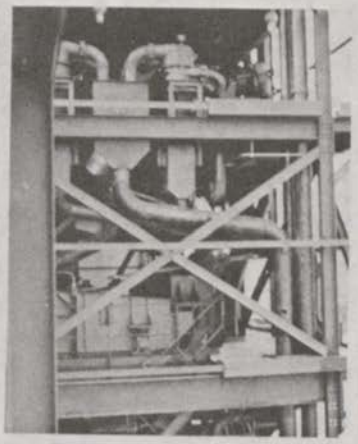


Sheet metal is fastened in place on the steel frame.

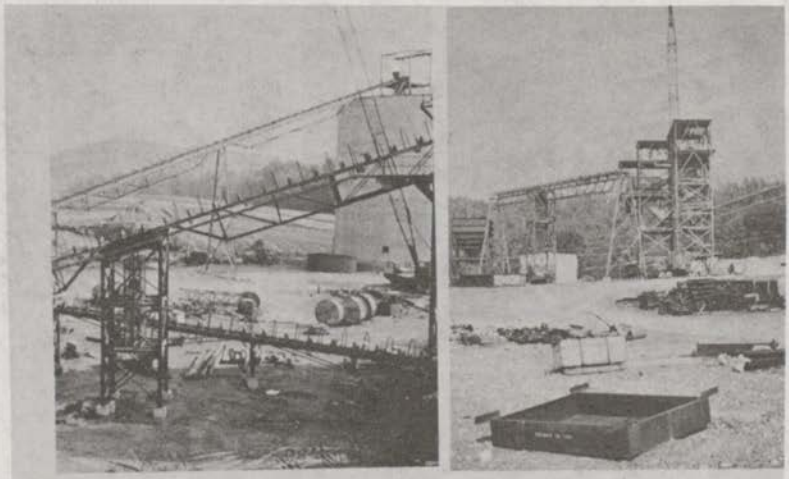


Thousands of feet of electrical wiring, as well as dozens of motors and control panels, are required in a modern preparation plant. Electrical subcontractors use highly skilled electricians to install the wiring and controls which will eventually be used to operate the plant.



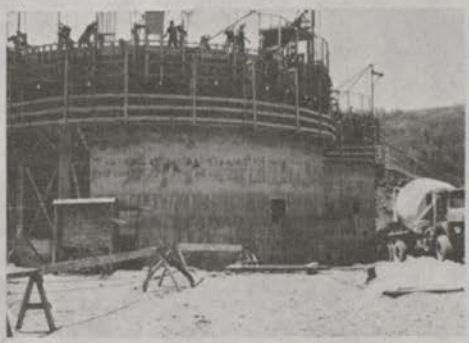


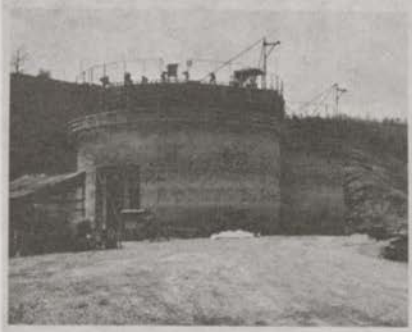
Likewise, hundreds of feet of pipe must be installed by pipefitters. Some subcontractors specialize in this type of work.



Conveyor systems are built and erected to handle the coal. Many skilled welders are required to build coal mine facilities.

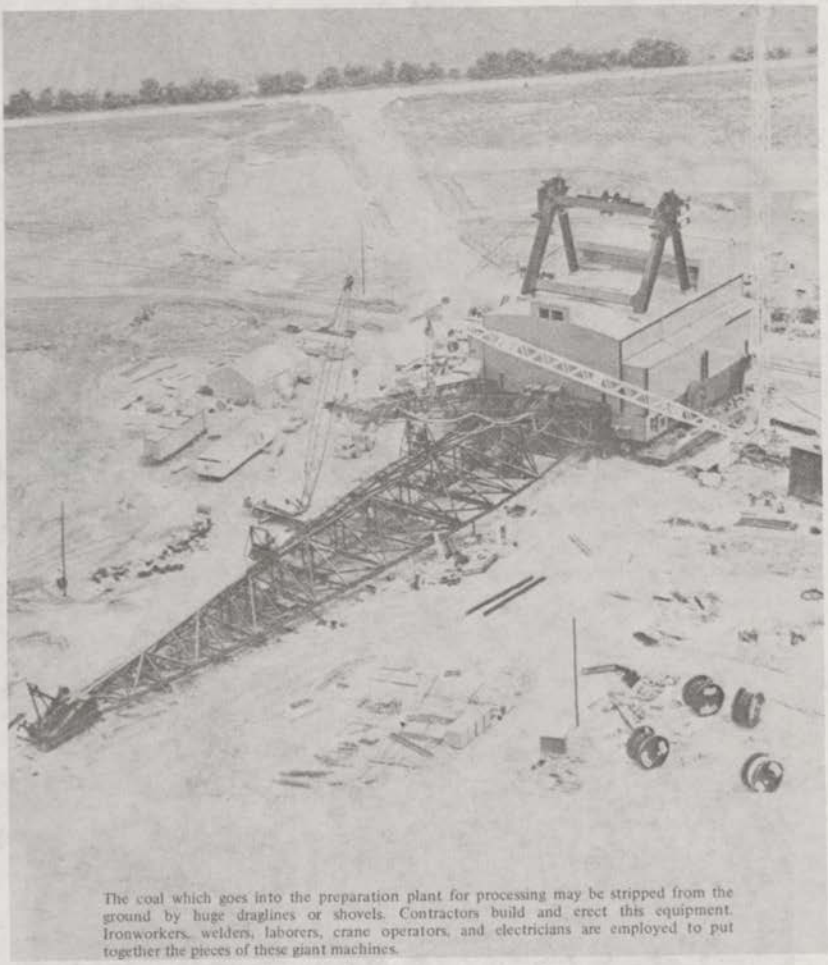
While waiting to be processed or loaded for shipment, coal is often stored in large concrete silos, a couple of hundred feet high. Building such silos is a type of work in which a few contractors specialize. Many laborers are employed to pour the thousands of feet of concrete needed in one of these silos.



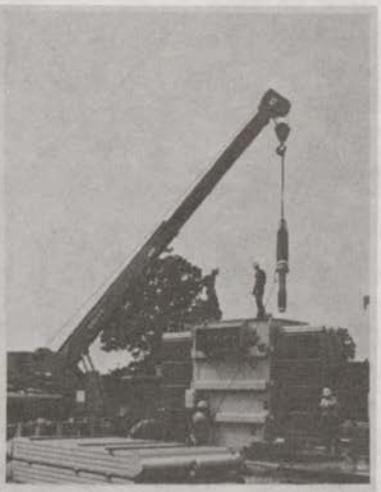


Cement finishers are employed to finish the concrete on a silo.

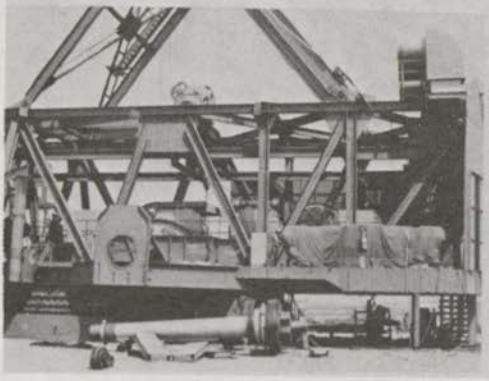
Coal mines are subject to strict environmental regulation. Contractors build the facilities which are needed to clean the thousands of gallons of water which will be used in the preparation plant to clean the coal.



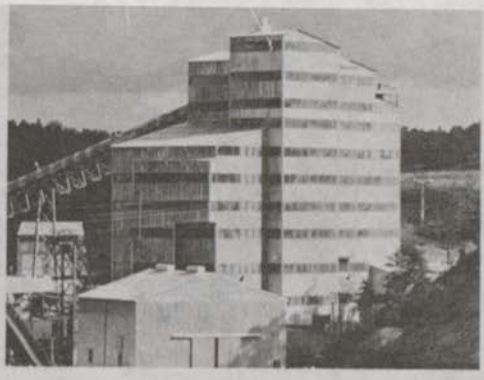
The coal which goes into the preparation plant for processing may be stripped from the ground by huge draglines or shovels. Contractors build and erect this equipment. Ironworkers, welders, laborers, crane operators, and electricians are employed to put together the pieces of these giant machines.



Many thousands of hours are required to construct a dragline.



When coal is mined from underground, shafts and slopes must be built so that the coal mine company can get to the coal. Independent contractors usually build these shafts and slopes. About twenty of the Association's 350 members perform this type of work. The shafts and slopes are first excavated, and then lined with steel-reinforced concrete. The initial excavation is often begun with a crane and "clam shell."



A finished coal mine may have involved the work of more than twenty contractors and hundreds of construction workers. As the work is completed, the contractors leave the site, and take their equipment, employees, and supervisors elsewhere, to start new jobs for both coal companies and other types of customers. The completed mine is turned over to the operator who can then begin to mine and process coal.

It is obvious that the construction of a coal mine is not the same as mining coal and should not be treated the same for purposes of health and safety. Contractors and construction workers should not be lumped together under the same regulations with coal operators and miners since the work they perform is totally different.

Construction is sometimes a dangerous and hazardous occupation, and as such it must be sensibly and reasonably regulated. Treating construction the same as coal mining does not, and will not, promote the health and safety of construction workers.

All photographs in this booklet have been supplied by members of the Association and are actual photographs of construction projects for coal company customers.

The CHAIRMAN. The Center for Law and Social Policy, Thomas Galloway and Davitt McAteer.

Unfortunately, though we look forward to this and you have been most helpful in the past we are running short on time. We would like to have you submit your statement. We have just about gotten to the limit of our legal authority to be here because there is floor activity now. You have been here before?

STATEMENT OF L. THOMAS GALLOWAY AND J. DAVITT McATEER, ATTORNEYS, CENTER FOR LAW AND SOCIAL POLICY

Mr. GALLOWAY. Yes, I have.

The CHAIRMAN. I hope that you have seen some of your ideas in our previous work product.

Mr. GALLOWAY. Yes, that is correct.

The CHAIRMAN. We are not going to forget you even though you have been here. We know you can be reached because you are not far from here.

Mr. GALLOWAY. We're right down the street.

Senator JAVITS. Mr. Chairman, I assume the statement will go in the record in its entirety.

The CHAIRMAN. Yes.

Senator JAVITS. It represents an enormous amount of work, my staff tells me, an excellent expression of what we call public service law. I sincerely thank you whether we agree or disagree. Your diligence is excellent. I thank you very much for it.

The CHAIRMAN. We will make it required reading for the activity we control ourselves.

Mr. GALLOWAY. We have prepared a short summary but I will shorten that to three or four ideas that we believe could be incorporated with very little problem. First, the civil penalty program. We believe the civil penalty program has been a failure as the Chair well knows, and we suggest two major amendments; one, prepayment of civil penalties; and, two, the administrative collection of civil penalties, a scheme along these lines which recently was adopted by the Subcommittee on the Environment on the new strip mine bill, H.R. 2.

We believe a parallel scheme under MESA would make a great deal of sense. I will not cover the details. That is fully covered in our written testimony.

Another matter is section 110(b), which we are deeply involved in, which is safety discrimination. We believe a number of changes should be made but, primarily there should be a provision in which a miner has a right to temporary reinstatement pending the final outcome of a case.

Miners suffer extreme economic hardship in prosecuting their cases. There should be a simple provision made that when the Secretary determines that the claim is not frivolous as a result of his investigation, that upon a motion of the miner the miner be reinstated temporarily pending the final outcome of the case. We believe that would have a tremendous impact on the viability of 110(b).

And lastly, and I am summarizing very quickly, we believe safety training should be expanded to include training in safety rights. The miners have been given a number of significant rights in the 1969

act; as our written testimony shows they have exercised them very rarely. Most miners do not know their rights exist.

We believe quite plainly that the safety training should be expanded to include training in safety rights.

Mr. McAteer. We have summarized and are willing to answer your questions. Given the short amount of time, we would like to thank you for even allowing us that.

The Chairman. You used to be with the union?

Mr. McAteer. That's correct.

The Chairman. And you have a West Virginia coal mining area background.

Mr. Galloway. I have a Kentucky coal mine background; Davitt has West Virginia.

The Chairman. We have reached that time, but your thoughtful work will be completely considered. I am sure we will be in touch with you before we do any finals on these bills. Thank you very much.

Senator Javits. Thank you very much.

[The joint prepared statement of Mr. Galloway and Mr. McAteer follows:]

TESTIMONY OF

L. THOMAS GALLOWAY AND J. DAVITT MCATEER*

ON BEHALF OF

THE COUNCIL OF THE SOUTHERN MOUNTAINS, INC.

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON HUMAN RESOURCES

U. S. SENATE

MARCH 29, 1977

*Attorneys
Center for Law and Social Policy
1751 N Street, N.W.
Washington, D. C. 20036
(202) 872-0670

Mr. Chairman, Members of the Subcommittee: My name is L. Thomas Galloway. With me is J. Davitt McAteer. We are testifying today on behalf of The Council of the Southern Mountains, Inc. ("Council"), an Appalachian-based, community-oriented, non-profit organization. The Council's membership includes active and retired or disabled miners, from both union and non-union mines. The Council is particularly concerned with the safety of non-union miners, who it believes now receive the least protection from the Coal Mine Safety Act. */

Mr. McAteer and I are attorneys at the Center for Law and Social Policy, a Washington-based public interest law firm which provides free legal services to persons and organizations otherwise unrepresented. The Center has formed a Mine Safety Project to provide legal resources where necessary to bring about improved enforcement of the Act and improved protection under the Act for miners and others threatened by unsafe mining practices. We represent the Council as well as individual miners in furtherance of these goals.

*/ The Council, through its Mine Health and Safety Committee and staff, receives complaints from miners on health and safety conditions in the largely unorganized central Appalachian mines, and attempts to resolve the health and safety problems as part of a continuing effort to improve conditions in the central Appalachian mines. The Council is now in the process of becoming a "representative of miners" in selected non-union mines in Appalachia. As a representative, under the Federal Coal Mine Health and Safety Act of 1969 ("Act"), the Council will have the power to perform several specific safety-related functions on behalf of the miners. In the course of its efforts on behalf of unorganized miners in Central Appalachia, the Council has developed considerable expertise on the Federal Coal Mine Health and Safety Act of 1969.

90-465 O - 77 - 22

Our testimony today will focus on certain enforcement problems that have arisen in the administration of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 801 et seq. ("Act"). We will discuss, in turn, the following areas:

(1) Civil Penalties

(2) Safety Discrimination Actions Under § 110(b)

(3) Miner Safety Training

(4) Closure Authority

(5) Other

CIVIL PENALTIES

The civil penalty program under the Mine Safety Act has been a failure. The reasons for this failure are many, and the lessons to be learned from the failure just as numerous. We will deal only with the two major shortcomings of the program -- low penalties and delay in collection.

Level of Penalties

The purpose of a civil penalty under the Mine Safety Act is to induce those officials responsible for the operation of a mine to comply with the substantive standards established by the statutory scheme. As this Subcommittee concluded in its report on S.1302:

> To be successful in this objective a penalty should be of an amount which is sufficient to make it more economical for an operator to comply with the [Mine Safety] Act's requirements than it is to pay the penalty assessed and continue to operate while not in compliance. */

*/ S. Rep. No. 1198, 94th Cong., 2d Sess. at 23 (1976).

Almost everyone -- Congress, labor, GAO, and the Executive branch -- have agreed at one time or another that the civil penalties in the Mine Safety Act have been assessed and collected at far too low levels and have been at best questionable deterrents. */

For example, the GAO, in a December, 1975 study, concluded:

> Civil penalties are assessed by the Federal Government to help insure that coal mine operators comply with existing health and safety standards. As we have found several times in the past, Interior's procedures in assessing and collecting penalties needed to be improved because:
>
> ... -- Penalties paid were much lower than the amounts originally assessed and were a questionable deterrent to noncompliance. **/

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*/ This Subcommittee has characterized the civil penalties under the Mine Safety Act as "too low." Id.

**/ Report to the Congress. General Accounting Office, "Improvements Still Needed in Coal Mine Dust Sampling Program and Penalty Assessments and Collecting." In August, 1974, MESA revised its penalty assessment procedure. The new procedure has resulted in still lower penalties, as the GAO Report noted:

> We question whether the August 1974 procedures providing for more consistent assessments because the Office of Assessment has been reorganized, will attain these results because of the subjectivity involved in determining the gravity of the violation. In addition, we question whether the amounts of the fines, which will be less because the penalty assessed will be based on a smaller penalty amount which was the result of reductions made at the Office of the Solicitor and Office of Hearings and Appeals during the interim procedures, will further deter noncompliance.

The civil penalties assessed against the Scotia No. 1 Mine, which exploded twice in March, 1976 killing 26 men, provide a vivid example of the low level of civil penalties, even for a repeated, chronic violator. From January 3, 1974 until the date of the explosion (a period of a little over a year) inspectors had discovered 62 violations of the ventilation standards alone at the mine. As incredible as it may seem the amounts assessed and collected for these recurring violations actually decreased as the number of violations increased.

According to United Mine Workers' calculations, the violations which Scotia had settled with MESA had an average cost of $121.35 each. Considering the size of Scotia's parent company, Blue Diamond Coal Co., and the fact that it marketed more than $30 million worth of coal a year, the penalty assessments represented a cost of less than two cents per ton. This amount is easily absorbed during production and is viewed as a "cost of doing business." Such penalties do not deter.

Low assessments and even lower collections have proven to be the norm for repeated violators. Scotia is the rule, not the exception.

The extremely low level of the current penalties (the average assessment per violation is now around $90,*/ and even

*/ Between 1970 and August of 1976 approximately $66 million in civil penalties have been assessed against coal operators. $60 million of these fines have been disposed of (settled) for $25.5 million, a recovery rate of only 41 percent.

that amount is further reduced by settlement negotiations) serves to assure the coal operators that they may freely violate the Act and standards as long as they are willing to pay a negligible "tax" upon their unsafe method of operation. As this Subcommittee concluded:

> [M]ine operators still find it cheaper to pay minimal civil penalties than to make the capital investments necessary to adequately abate unsafe or unhealthy conditions; and there is still no means by which the government can bring habitual and chronic violators of the law into compliance. */

Further, there has been a definite downward trend in the assessment of civil penalties. The average assessment per violation has decreased from $200 in January, 1974 to $90 in April, 1976 (Chart A, id. at 25). Clearly the penalties must be raised if they are to serve as a deterrent to noncompliance. **/

The difficult question is how to raise the penalties to a level where they could serve as a deterrent, and do it in a fair manner where relatively infrequent violations are not

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*/ S. Rep. No. 1198, supra, at 26.

**/ Operators are often heard to argue that the reason the average penalties are so low is that there are many "nickel-dime" violations that pull down the average penalty. The evidence does not support the claim. Year after year it is the most important regulations, roof control, ventilation, accumulations, electricity, that head the list of the most violated standards, as the following chart indicates:

[Footnote continued]

fined heavily, and at the same time have a workable, administratively sound system.

There are a number of possible approaches. We suggest that a separate provision be developed to require a penalty to be added to the regular civil penalty whenever an operator violates the Act a certain number of times within a given time period. The repeated violations provisions could be limited

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[Footnote continued from preceding page]

(Underground safety) - Section 104(b) Notices

	Reg. Violated	No. of Times
1971-1	75.505 (electrical)	3198
2	75.200 (roof)	2754
3	75.400 (accumulation of combustible materials)	2642
4	75.301 (ventilation)	2281
5	75.516 (power wires)	1804
1972-1	75.400 (accumulation of combustible materials)	4209
2	75.503 (electrical)	3129
3	75.200 (roof)	2775
4	75.512 (electrical)	2557
5	75.603 (trailing cables)	1914
1973-1	75.400 (accumulation of combustible materials)	3862
2	75.200 (roof)	3609
3	75.503 (electrical)	3384
4	75.512 (electrical)	2171
5	75.301 (ventilation)	1716
1974-1	75.503 (electrical)	4862
2	75.400 (accumulation of combustible materials)	4211
3	75.200 (roof)	3935
4	75.1100 (fire protection requirements)	2097
5	75.1722 (equipment generally)	1895

Figures for 1975 and 1976 are not yet available.

As the Interior Department has correctly noted in its Annual Reports, these are the violations that cause death and serious injuries through roof falls, explosions, fires, and electrocution. Almost half the 56,112 section 104(b) notices in 1974 were issued for violation of 10 regulations. Again, in 1973, almost half (21,198) notices of violations were issued for the violation of only 10 regulations.

to serious violations; if this is done, we suggest that additional penalties be assessed for violations of Sections 202, 301-305, 307, and 313 (sections of the 1969 Act). We suggest that the threshold for the additional mandatory penalty be adjusted to mine size, either through tonnage or number of employees. This is fair since large mines have greater exposure to possible violations.

Under our proposal, the additional penalty would be added to each new violation for a set period of time; we suggest six months. If the operator continued to violate the Act at a rate above the threshold, his exposure to the add-on penalty would continue. At the same time he would have a substantial incentive to reduce his violations; both to keep the penalties to a minimum and to get out from under exposure to the add-on penalty. This additional penalty could not be compromised by the Secretary. We suggest $750-$1000 as a minimum additional penalty. The Secretary should be given the discretion to increase the add-on penalty if circumstances warrant.

Neither the Secretary nor the Attorney General should have the authority to accept less than the minimum $750-$1000 payment for a violation in which the additional penalty is assessed.

Delay in Collection of Civil Penalties

If the add-on penalty scheme is adopted, or indeed, if penalties are raised in any manner, there will be serious problems in collecting the penalties. Indeed, one of the major justifications for the current low level of penalties is that they are collectible. If substantial penalties are assessed,

and the collection scheme is not efficient, then a huge backlog of cases will develop, because some operators will fight almost all the penalties, while others will ignore the whole process, relying on the huge backlog of cases in coalfield courts to slow down enforcement orders. And the operators know if a huge backlog does develop, there will be irresitible pressure on Interior or Labor to compromise the penalties in order to get them collected and the backlog reduced. Therefore, any proposal to raise penalties must in our judgment be coupled with a streamlined system for collection, which does not reward delay. To accomplish this end, we propose two major amendments:

A. Prepayment of Penalties; and

B. Administrative Collection of Penalties When Prepayment Is Not Made.

Prepayment of Civil Penalties

As the system currently stands, the operator does not pay, or put any money up, until the very end of the system. Thus, if an operator wants to ignore the initial assessment, administrative procedures, and referral to the Justice Department for District Court enforcement action, he can. It costs him nothing.*/

*/ Of the civil penalty cases imposed under the Coal Mine Health & Safety Act approximately 75% are handled in three federal districts: Southern District, West Virginia, Eastern District, Kentucky, and Western District, Virginia. The Western District of Virginia has the largest number of civil penalty cases. Since the Act went into effect in 1970, their office has received approximately 2500 civil penalty cases. Of [footnote continued]

We believe that all civil penalties should be prepaid, that is, that an operator be required to pay an assessed civil penalty within thirty days after its assessment, whether or not he wishes to contest the penalty. If the operator contested the violation and prevailed, he would receive his money back with interest. Failure to pay the penalty would result in a waiver of all legal rights to contest either the violation or the amount of the penalty. The system raises no due process issues, since if an operator prevails in his challenge, he receives his property, that is, the money, back with interest.

There are alternatives to prepayment, namely, the posting of a bond, or adding interest from the time of assessment.

[Footnote continued from preceding page]

these 2500, approximately 1000 have been disposed of either by settlement or default judgment. Approximately 100 cases have been sent back to the Interior Department to correct administrative mistakes. Another 500 to 600 cases, all pre-1973 cases, have been sent back to MESA for reassessment according to 1973 formula. This leaves a backlog of approximately 800 cases.

In the Eastern District of Kentucky, the United States Attorney's office has received approximately 1355 civil penalty cases (as of July, 1976). Of these cases, approximately 250 cases have been filed in the district court. Of these 250, approximately 120 have been docketed. Another 250, approximately, have been settled. This leaves approximately 800 cases which are waiting to be processed.

The Southern District of West Virginia has received over 1000 civil penalty cases since the Act went into effect. Of these 1000 cases, 200 have been settled. The remainder, approximately 800, represents the current backlog.

The statistics relating to the disposition of the civil penalty cases are not exact but they represent the best information we were able to obtain from the Justice Department and the United States Attorneys in the relevant districts. Apparently their record-keeping system in this area is incomplete.

We believe that full prepayment is preferable since it is the most solid proof that an operator is serious about contesting the penalty. At the least, there should be a bond. The Federal Water Pollution Control Act which provides for civil penalties for the discharge of oil has a provision for posting a bond, and this has proven a very effective system. The problem with merely placing interest in the operator is that it does not place an affirmative obligation on the part of the operator to act. S.717 does not even provide for the payment of interest. Therefore, delay is rewarded.

Whichever of the two methods is chosen, prepayment or bonding, it is crucial that provision be made for administrative enforcement of penalties when the operator refuses to post bond or make prepayment, in other words, the recalcitrant, fly-by-night operator. Referring a case to a U. S. District Court for enforcement is a very serious mistake, even if the enforcement action is summary.

The U.S. District Courts in the coalfields are the most overburdened in the nation. Even if enforcement action were placed on the summary calendar, there would be delay; and even after the order is granted, the

operator may still refuse to pay. Then it is necessary to hold the operator in contempt, which will require more court time. Put simply, enforcement through District Court action is unwieldy even when there is only summary review.

Moreover, District Court review is unnecessary. By the time the case goes to District Court, the operator has either waived his rights to a hearing or has exhausted his hearings and appeals rights.*/ His due process rights have either been exercised or waived.

We believe that administrative collection without involving a U.S. District Court is far preferable. We therefore propose that a provision be written into the Act that simply states that any refusal to honor a final order of the Secretary (after all hearings and appeals rights have been exhausted or waived) be considered a violation of the Act, subject to the issuance of a Notice of Violation. Thus, if the operator refused to pay the penalty, he would be given a Notice of Violation under what is now § 104(b) with a reasonable time to abate, that is, pay the penalty. If the operator refused to pay within the time, a § 104(b) order would be issued to close the mine, and the mine would remain closed until the penalty was paid.**/

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*/ We propose that an operator be allowed to appeal a final order of the Secretary (including a civil penalty order) to the U.S. Court of Appeals as now occurs under OSHA, or alternatively to a U.S. Magistrate or the U.S. District Court.

**/ An even better system would be that recently accepted by the House Subcommittee on the Environment for civil penalties for violations of strip mine standards. If the operator refused to pay, the government would take the penalty from a bond that is required to be posted as a condition of operation, and the operator would not be allowed to mine coal until the bond was replenished. If used in the Federal Coal Mine Safety program, the Act would have to be amended to require such a bond.

SECTION 110(b) - DISCRIMINATION BECAUSE OF SAFETY ACTIVITY

Section 110(b) purports to protect miners from discharge or other form of discrimination because they have engaged in certain protected activities such as notifying the authorities of a danger or safety violation, filing or instituting a proceeding under the Act, or testifying in enforcement or administrative proceedings under the Act.

Any miner who believes he or she has been discriminated against for engaging in protected activities may apply to the Secretary for relief and is entitled to an investigation, including a hearing that is subject to judicial review. A determination in his or her favor entitles the miner to reinstatement, back pay, and/or any other relief the Secretary deems appropriate to effectuate the purposes of the Act.

If there is to be a realistic hope that miners will risk their livelihood to enforce the Act and improve safety and health conditions in the mines, then the government must give the miner an effective weapon to combat the retaliation that is almost certain to flow from safety activity.

Congress attempted to give the miner such a weapon in § 110(b) of the Act. Section 110(b) has been interpreted liberally by the federal courts to provide broad protection against retaliation. Unfortunately, the bright promise of

§ 110(b) has not been realized in the day-to-day life of the American coal miner because of lack of knowledge of its existence */ and because the Interior Department has whittled

*/ To date, in the six years the Act has been in effect, only 28 Section 110(b) cases have been filed, or less than five a year:

ALJ Cases

1. Koons, et al. v. Southern Ohio Coal Co., VINC 75-379 (8/20/76) (Cook).
2. Adkins and Hunt v. Deskins Branch Coal Co., PIKE 76-66 (12/6/76) (Michels).
3. Lambert v. Carbon Fuel Co., HOPE 76-314 (11/10/76) (Broderick)
4. Roybal v. United States Steel Corp., DENV 76-39 (8/25/76) (Mesch).
5. Ratliff v. Standard Sign & Signal Co., PIKE 76-134 (8/11/76) (Moore).
6. Dozier, et al. v. Mead Corp., BARB 75-668 (1/30/76) (Merlin)
7. Barker v. Westmoreland Coal Co., NORT 75-223 (12/12/75) (Kennedy).
8. Baker & Dist. 6 of UMWA v. North American Coal Corp., VINC 74-872 (3/17/75) (Fauver).
9. Cline v. Itmann Coal Co., HOPE 76-364 (10/28/76) (Steffey).
10. UMWA Local 1110 for Cheslick, et al. v. Consolidation Coal Co., MORG 77-3 (11/22/76) (Kennedy).
11. Phillip Ball & Local 1155 v. Westmoreland Coal Co., NORT 75-129 (10/2/74).
12. Burton v. Pyro Mining Co., BARB 76-546 (10/19/76).
13. Christian v. South Hopkins Coal Co., BARB 77-184 (2/24/77).
14. Church v. Westmoreland Coal Co., (no docket number) (7/20/73).
15. Irick v. Standard Sign & Signal, PIKE 76-138 (10/5/76).
16. Johnson v. Peabody Coal Co., BARB 76-154 (12/10/75).
17. Keel, et al. v. Eastover Mining Co., BARB 77-94 (12/27/76).
18. Matala v. Consolidation Coal Co., MORG 76-53 (12/15/76).
19. Money v. Three States Trucking, Inc., VINC 77-2 (10/15/76).
20. Rogers, et al. v. Anschutz Coal Corp., DENV 76-138 (1976).
21. UMWA v. Consolidation Coal Co., MORG 76-138 (10/4/76).
22. Local 1110 & Carney v. Consolidation Coal Co., MORG 77-20 (2/24/77).
23. Maynard v. Standard Sign & Signal Co., PIKE 77-___ (3/20/77).

IBMA

24. Wilson v. Laurel Shaft Construction Co., Inc., 1 IBMA 217 (12/19/72).
25. Shapiro v. Bishop Coal Co., 6 IBMA 26 (3/2/76)
26. Parks v. L&M Coal Corp., 7 IBMA 172 (1976)

away at the court interpretations and has refused to perform the role assigned it by Congress in protecting miners from retaliation.

S.717 addresses some of these problems, but leaves others untouched. This is perhaps understandable since several of the problems are best handled through a clear expression of congressional intent by the Committee. However, there are problems which must be addressed in the statute itself; also, in at least one case, S.717 restricts the scope of protection afforded. This must be corrected.

Restrictive Interpretations by the Interior Department

Despite broad federal court interpretation of the scope of employee protection in Phillips v. Interior Board of Mine Operations Appeals, infra, and Munsey v. Morton, infra, the adjudicative arm of the Interior Department has restricted the protection afforded miners for safety activity. It has done this in a number of ways:

1. Notification of the Secretary. The Interior Department first ruled that miners are protected from retaliation only when they complain to the Secretary of the Interior, or his designate, the federal coal mine inspector, not when they report a safety problem to mine management, a far more common occurrence. The federal courts reversed the Department and

[Footnote continued]

U.S. Court of Appeals

27. Phillips v. Interior Board of Mine Operations Appeals, 500 F.2d 772 (D.C. Cir. 1974).
28. Munsey v. Morton, 507 F.2d 1202 (D.C. Cir. 1974), rev'g Munsey v. Smitty Baker Coal Co., 79 Interior Dec. 501 (1972).

extended protection to a miner when he or she complains to his or her foreman about safety.*/ S.717 addresses this problem when it explicitly states that a complaint to an operator, his agent, or the safety representative is covered. This provision should be retained.

2. Intent to Notify Federal Government. Another method utilized by the Interior Department to lessen the safety protection afforded a miner is to require the miner to have an intent to notify the federal government when he engages in the safety activity. This requirement mocks the reality of a miner trying to save his or her life in the most dangerous job in the western world. When a miner in fear for his or her life refuses to work in a place he or she believes

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*/ The Interior Department has attempted to limit the impact of the Phillips and Munsey decisions by seizing upon certain ambiguous statements in Phillips to restrict the scope of protection afforded miners. The ambiguity was created by the Court when it said that to determine whether a safety complaint to a foreman was protected activity, the court would look at three factors -- the remedial purpose of the Act, the practicalities of the situation, and the procedure in effect at the mine. This three-factor test has been interpreted in various ways by various Administrative Law Judges, and the result is near total confusion over when a miner is protected when reporting a safety complaint to his foreman.

The confusion is unfortunate and unnecessary. Coal mining is a dynamic process, with quickly changing conditions. Federal inspectors cannot be on the mining scene at all times. Therefore, if a miner encounters a possible violation of law or a danger, as a practical matter it must be dealt with at the time. When a miner sees a dangerous condition, he has only the section foreman, his boss, to notify; he has no way to directly contact an inspector. Consequently, in most cases where conditions create a present danger or constitute a violation of the Act, the only practical way for a miner to report the complaint and get the dangerous practice or condition corrected is through the foreman. Thus, the foreman should stand in the shoes of the Secretary as far as the reporting of safety complaints is concerned when a federal inspector is not on the scene and the unsafe condition or practice must be dealt with immediately.

dangerous, the refusal does not normally in the miner's mind constitute a notification of the Secretary, of whom he has never heard; it is an attempt, and in many cases a desperate attempt, to save life or prevent injury. There is no doubt that if the Secretary's representative were at the scene the miner would complain to the inspector. However, the inspector is not there, and the miner has only the foreman (in most cases) or the safety committee. Despite the common sense behind this, the Interior Department decisions on this point conflict, and the law is unclear. S.717 solves this problem by explicitly covering complaints to the operator's agent.

3. Good Faith Refusal to Work. In reversing the Interior Department, the federal courts held that the Act protects a miner who refuses to work in conditions he believes in good faith to be unsafe.*/ This may at first glance appear straightforward, but it should come as no surprise that the Interior Department has taken even this simple holding and through a crabbed and illogical interpretation succeeded in restricting the protection afforded a miner engaged in safety

*/ Under the federal court decisions, the miner need not accept the judgment of the foreman on the danger posed by a condition or practice. In Phillips, the Court of Appeals stated

> It is conceded by Respondent that, pending a resolution of a safety or health complaint, a miner at the Ken Car Mine had the right to refuse work under conditions which he believed in good faith to be hazardous to his safety or health. 500 F.2d at 780 (emphasis of Court of Appeals deleted).

In Munsey, another panel of the Court of Appeals made clear that a miner was protected by § 110(b) if he refused to work "under conditions believed in good faith to be dangerous." 507 F.2d at 1209, n.58 (emphasis added).

activity. The issue */ concerns whether the good faith test is subjective, that is, whether a miner had an honest belief that a violation or danger existed, or objective, that is, whether a miner's honest belief is supported by objective evidence. **/ The objective evidence test amounts to second-guessing the miner, and chills complaints. For the miner knows that the coal company can afford good laywers to argue and expert witnesses to testify on the objective conditions, while the miner will have few or no resources for a court battle. Aware of these odds, the miner is likely to keep his mouth shut and not complain.

*/ The Board has never ruled on the issue. In remanding the Munsey case to ALJ Stewart, however, it directed him to determine "...whether the refusal by applicants to work was reasonable in light of the surrounding facts and circumstances." Memorandum and Order, Munsey v. Smitty Baker Coal Co., IBMA 72-21 (7/7/75) at 4 (emphasis added). This instruction does not amount to a ruling and has no precedential value.

**/ The Administrative Law Judges have issued a number of decisions in which they conclude that the miner had a "sincere" apprehension or a "genuine, good faith fear" of injury, or that the miner "believed" there was a danger. However, in some decisions the Judges have applied an objective standard. See Baker v. North American Coal Corp., VINC 74-872 (1975); Parks v. L&M Coal Corp., NORT 75-377 (1976). One Judge has explicitly applied both the objective and subjective test, ruling that the issue was unresolved. Dozier v. Mead Corp., BARB 74-668 (1976). These rather confused decisions contrast with other decisions which explicitly do not extend protection against discharge unless there is objective evidence and an honest belief on the part of the miner that there was a danger or violation. Munsey v. Smitty Baker Coal Co., VINC 75-379 (1976). Once it is determined that a miner's honest belief is not enough, the court must determine how much evidence is necessary before a miner's complaint will be protected. Again there is confusion with both "preponderance of the objectively ascertainable evidence" and "reasonably prudent miner" tests utilized by the Judges.

It takes courage for a miner, especially one in an unorganized mine, to stand up for safe practices; understandably, few do. Congress recognized this problem and sought to give "the greatest possible protection" it could to miners who would stand up for safety, risking, by this act, their jobs and their families' livelihood. Conference Report on S.1302, U.S. Senate, Committee on Labor and Public Welfare, p. 41. To require the miner's complaint to meet some vague objective standard goes a great distance toward insulating discriminatory acts from § 110(b) review, especially in unorganized mines. And it would do so for no sound policy reason. Requiring objective evidence to support a miner's good faith belief that a violation or danger existed means requiring more than a miner's honest belief. Under the objective approach miners who themselves report conditions they believe unsafe but who are incorrect would be totally unprotected from discharge or discrimination. The subjective test of good faith is ample protection from sham complaints. Nor is the standard difficult for a judge to apply. S.717 does not address this problem. This could be corrected by a strong directive to the Department through the legislative history of this bill that it was not the intent of Congress in 1969, and is not now the intent of Congress to so restrict the protection afforded a miner for

reporting unsafe conditions or violations of the law.*/

Role of MESA in Safety Discrimination Cases

The second major failing of the protection against discrimination scheme lies in the activities of MESA or the lack thereof.

For § 110(b) to be effective, the miner must have access to lawyers and the resources necessary to litigate the case. Few miners have such resources. Typically, when a miner is fired because of safety activity, the company will fight unemployment benefits and the miner is often hard-pressed to meet the daily expense of living, much less finance what usually amounts to a major lawsuit. Congress saw this problem, and allowed the award of attorneys fees to miners who prevail in their claims against the company. However, there are few lawyers in the coal fields who do not represent the coal companies, and for attorneys who enjoy a successful practice, the possible award of attorneys fees is not a compelling attraction since there is no guarantee they will prevail. Also, a contingent fee arrangement usually will not work since the amount recovered is basically limited to back pay.

*/ The Committee should also make explicit what is implicit in the Phillips and Munsey decisions, that is, that a miner can refuse to work if there is a violation of law that the operator refuses to correct.

Even if an attorney accepts the case, there is usually the need for considerable expertise in coal mine safety and coal mining in general, expertise the average attorney does not have. Expert witnesses and consultants are almost always beyond the reaches of the attorney representing the miner.

There is a partial solution to the problem, and that solution lies in the role of the Mining Enforcement and Safety Administration in discrimination and discharge cases. Until recently MESA took a narrow view of its responsibilities in this field; it neither investigated § 110(b) claims nor participated in the hearings that resulted from the claims. Recently, the United Mine Workers of District 12 and the Council of the Southern Mountains, represented by us, sued the Interior Department in U. S. District Court to force it to conduct investigations whenever a complaint is filed, and to participate as a party in the proceedings. That litigation is pending.

S.717 does address this problem in an oblique way in that it sets up a two-tier system in which the Secretary conducts an investigation and if he determines that there is a violation, he files a complaint with the Commission. However, the Committee should make it clear that the Secretary must conduct an investigation when a miner files a complaint. This might seem obvious; however, the language on the Secretary's obligation

to conduct an investigation is drawn word-for-word from § 110(b) and the Secretary has interpreted it not to require an investigation.

Temporary Reinstatement of Miners

Perhaps the greatest single failing of § 110(b) is the hardship that miners must undergo to prosecute their cases. Even if they overcome all the obstacles we have discussed and ultimately prevail, they will endure significant economic hardship during the 1-2 years it takes to litigate their cases.

Typically, when a miner is fired for safety activity and files a § 110(b) complaint, he has no source of income to support himself during the litigation, if he is lucky enough to find a lawyer to take his case. The company usually fights the unemployment claim, and jobs are hard to find in the coalfields when one is fired for bucking management by reporting unsafe practices of the companies. Delay is on the side of the company, and operators can and do "starve out" miners, forcing them to abandon their claims or accept a low settlement. For example, we represented a section foreman in Pike County, Kentucky who was discharged because he refused to violate a federal closure order. He ultimately prevailed, and got his job back plus $15,000 back pay. However, he endured considerable hardship in the 10 months it took to obtain relief. And it took 10 months even though the company defaulted.

This case is representative of the problems a miner faces in filing a safety discrimination complaint.

We suggest a simple change to obviate this problem by, in effect, shifting the presumption in cases in which a § 110(b) claim is filed. We suggest that whenever a miner is fired and files a § 110(b) petition, the Secretary make a preliminary investigation within 15 days of the claim. If he determines that the case is not frivolous, the miner shall immediately be reinstated pending the final outcome of the case. This procedure is similar to one existing in Sweden, and should lessen the hardship caused by discharge, increase both the scope and number of U.S. miner safety actions, and make § 110(b) a viable remedy for discriminatory discharge, something it is not today. S.717 does not as currently drafted address this problem. */

Protection of Representative from Discrimination

As presently drafted, S.717 does not protect the representative of the miners from discrimination for engaging in safety protection. The Federal Coal Mine Health and Safety Act does protect the representative; we believe the deletion to be inadvertent. Clearly, the representative of the miners should be protected.

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*/ We also suggest that a miner be given 90 days to file the complaint, and the Commission be given power to waive the requirement if good cause is shown.

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SAFETY TRAINING

Our comments on safety training fall into two major categories -- training in miners safety rights and certification of miners and instructors.

As this Committee is aware, the Department of the Interior has proposed regulations on safety training and held hearings in January in Denver, Colorado and Charleston, West Virginia on the proposed regulations. The proposed regulations are weak and contain numerous loopholes; they should not be looked upon as a reason to drop the stronger statutory requirements contained in this legislation.

Miners Safety Rights

Congress in passing the Federal Coal Mine Health and Safety Act recognized that enforcement of the Act's strict health and safety standard could never be accomplished adequately through the efforts of the federal coal mine inspector corps, no matter how vigilant or how dedicated. MESA's inspection resources are limited, and inspectors cannot be in all mines at all times, or indeed come anywhere near to a continued presence in all coal mines. This is true despite repeated claims by various and sundry operators that federal

inspectors are always on mine property.*/

Congress recognized that inspectors could not be present at most mines more than a tiny fraction of the total work time. Consequently, it incorporated into the Act a supplemental system by which miners and their representatives could protect themselves and improve safety and health conditions in the mines when inspectors were not present. In granting these rights Congress clearly intended that miners play an active role in enforcing the Act, and provided protection for miners who invoked their safety rights and suffered discharge or discrimination as a result. However, miners and their representatives

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*/ According to the Coal Mine Health and Safety Division, no hard figures exist on nationwide inspection hours per section, or per mine, which would enable us to say with strict accuracy exactly how long inspectors spend underground or inspecting strip operations. However, a fairly reliable picture can be drawn from HSAC and Coal Mine Safety Division date and estimates.

There are approximately 747 federal inspectors who inspect coal mines on a daily basis, and Hershel Potter, of the Division of Coal Mine Health and Safety, estimates that these inspectors spend no more than 50% of their time actually inspecting the mines. Additionally, there are 219 DAR specialists who spend no more than 25% of their time in the mines. Thus, using the figure of 217 working days per year, MESA has approximately 750,000 actual inspection hours to cover 7,380 working sections. Assuming there are two shifts per day, this would mean that a federal inspector at the average coal mine is present approximately 3% of the time while men are underground or working in surface mines.

have not invoked their safety rights and protection afforded them by the Act very often. Why? As with most simple questions, the answer is complex and varies from mine to mine, and region to region. The simplest reason, however, is the most telling, especially in non-UMWA mines -- the miners simply do not know what their rights are.

Now, we are not so naive as to believe that every miner, when informed of his rights, will invoke these rights when he or she suspects that a violation or danger exists, especially in the coercive environment of an unorganized mine. Some miners, however, will invoke their rights, and that alone justifies the training on safety rights. Moreover, whether miners actually invoke their rights, they are at least entitled to know what their rights are and to make that decision for themselves.

The following rights were granted miners and/or their representatives by the 1969 Act or by agency action; their use in the six years the Act has been in effect is set out beside each right.

RIGHT	USE SINCE 1970
1. Right to select a representative of the miners.	Of approximately 5300 coal mines, there is a representative at only 11 non-UMWA bituminous mines. Since the UMWA is a representative at approximately 1,000 mines, there are over 4,000 mines today in which there is no safety representative.

2.	§ 103(b) - Right to demand an immediate inspection when a miner or representative believes there is a violation or imminent danger.	Used 620 times in 6 years, or about 8 times a month.
3.	§ 301(c) - Right to petition to modify a safety standard.	Used rarely, and then only by UMWA.
4.	Hot Line to call MESA anonymously to report danger or violation.	Used 499 times, or about 80 times a year. One MESA district has never had a complaint.
5.	Right to refuse to work in unsafe conditions.	Used small but indeterminate number of times.
6.	§ 110(a) - Right to compensation when closure order is issued under § 104.	Used regularly by UMWA; rarely if ever invoked in unorganized mines.
7.	§ 105 - Right to administrative review of Notices and Orders issued under § 104.	Used by UMWA; has never been used by unorganized miners.
8.	§ 110(b) - Right to file a complaint if discriminated against because of safety activity.	Twenty-eight cases filed, or less than five a year.

There are other rights which are rarely used such as § 103(h) (walkaround rights with federal inspectors). Additional rights have developed from the basic statutory grants, such as the right to participate in meetings between management and MESA on safety matters. Like the rights listed in the chart above, these also are rarely invoked.

Of course, operators could argue that the limited exercise of miners safety rights reflects safe mines and compliance with the law, rather than a lack of knowledge on the part of miners of their safety rights. The evidence suggests otherwise. As discussed earlier, federal inspectors are at the average coal mine roughly 3% of the time. In that time, they have issued between 7,000-8,000 imminent danger orders, 13,000 (b) and (c) orders, and over 400,000 notices of violations. In the other 97% of the time, in a six and one-half year period in which 1000 men died and well over a hundred thousand miners were injured, miners called MESA on the Hot Line 499 times, invoked §103(g) inspections approximately 620 times, and refused to work in unsafe conditions an indeterminate but unquestionably small number of times. The contrast would be even more striking if we could separate UMWA and non-UMWA mines, since most if not almost all of the individuals and representative safety activity has occurred in UMWA mines.

There can be no doubt that most miners do not know their various safety rights; the evidence is overwhelming whether taken from statistics, or impressions through talks with miners, or through legal cases.

This problem could be solved by a simple amendment to the safety training provisions of this legislation to require that miners be instructed in all their safety rights.

Certification of Miners

S.717 should make it clear that only miners certified in the operation of particular machines, such as roof bolters, continuous miners, etc., can legally operate those machines. This standard would be very simple to enforce and should substantially improve safety. If certification on the operation of machines were made a mandatory safety standard, then a federal inspector on his daily rounds could simply stop miners who were operating various machines and ask them to produce their certification. If they could not, and if the operator could not produce it, the inspector could cite the company for a violation of a mandatory safety standard. If the practice persisted, the operator could be subjected to summary closure under § 104(c).

Machine certification would not unduly restrict the mining process, since operators could train each man on two or three machines and thus provide flexibility to cope with sickness, absenteeism, etc.

Instructor Certification/Decertification

S.717 does not require that only certified persons instruct. The legislation does not set out what requirements or standards a person must meet to become certified, nor does S.717 establish any procedure by which an instructor may be decertified for poor performance, for failure to instruct over a period of time, etc.

Clearly, there should be criteria for certification and decertification. Certification and decertification should be done by a Board acting on established criteria, a process in which the instructors, representatives of the miners and other interested persons should have input. Miners at a given mine should have the right to request decertification of an instructor at their mine and receive a public hearing to determine whether the instructor should be decertified. More generally, miners should have the right to challenge the adequacy of their training program, first in the formulation process, and then after it goes into effect. The legislation should require that a person outside the management chain of command provide the instruction.

§ 104 Enforcement Authority

Several problems have arisen in the interpretation of the enforcement authority granted federal coal mine inspectors under § 104 of the Act. These problems should be corrected by this legislation.

1. Imminent Danger Order. The major problem with the § 104(a) imminent danger order is the level of harm necessary before an order can be issued. An imminent danger exists whenever "the existence of any condition or practice, or any violation of a permit or other requirement of this Act, in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated."

The Board of Mine Operations Appeals has interpreted this definition to require an incredibly high level of harm before an order can be issued. The Board has ruled that the occurrence of an accident in the time needed to correct the dangerous condition or practice must be at least just as probable as not before an inspector may issue an imminent danger order. */

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*/ Freeman Coal Mining Co., 2 IBMA 197, 212 (1973). See also Rochester and Pittsburgh Coal Company, 5 IBMA 51 (1975). Federal Courts have ruled on the correct interpretation of "imminent danger, yet confusion still persists. In Eastern Associated Coal Co. v. Interior Board of Mine Operations Appeals, 491 F.2d 277 (4th Cir. 1974), the 4th Circuit adopted the following definition:

> "[a]n imminent danger exists when the condition or practice observed could reasonably be expected to cause death or serious physical harm to a miner if normal mining operations were permitted to proceed in the area before the dangerous condition is eliminated.

The Eastern Court thus did not use the 50 percent risk threshold requirement, although the case was decided after the Board adopted the threshold test in Freeman, supra. [Footnote continued]

Freeman was appealed to the Seventh Circuit Court of Appeals, where the Court incorporated the threshold requirement, finding that

> A reading of the entire section, in light of the Act's humane purpose, makes clear that the Board has correctly construed "imminent danger as being a situation in which a reasonable man would estimate that, if normal operations designed to extract coal in the disputed area should proceed, it is at least just as probable as not that the feared accident or disaster would occur before elimination of the danger." 504 F.2d 741, 745 (7th Cir. 1974).

The Court indicated that it upheld the Board test because it resulted in expanded coverage and therefore was consistent with "the Act's humane purpose."

Then, in Old Ben Coal Co. v. Interior Bd. of Min Op App., 523 F.2d 25 (7th Cir. 1975) the same court upheld a Board decision in which both the Eastern and Freeman tests were applied. The Court adopted neither explictly, yet stated:

> "...the inspector in this case could reasonably conclude that there was a reasonable expectancy that an inadvertent ignition could have occurred before the accumulations could have been abated..."

seemingly applying the Eastern test. [Footnote continued]

Thus, the Board requires that the risk of death or serious injury before abatement must be at least 50 per cent, or one in two, before a § 104(a) order may issue.

This test is incredibly strict. It is incongruous indeed that a person is denied the protection of withdrawal under a federal safety and health statute when he or she faces a 40% danger of serious bodily harm or death before abatement is possible, when the danger has been noted by a federal inspector standing on the scene. The "at least as probable as not" standard exposes persons to a level of risk of serious injury or death that should be unacceptable to a civilized society.

We suggest the following test to determine whether a given condition or practice creates a reasonable expectation of death or serious injury:

> A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

This definition is now in H.R. 2 , the strip mining bill, as the definition of imminent danger.

[Footnote continued from preceding page.]

Thus, the state of the law in Federal court is confused. The Board, however, has clearly adopted the 50 percent risk of death or injury threshold. Rochester & Pittsburgh Coal Co., supra.

The Council argued this issue in Pittsburgh & Midway Coal Co. v. MESA, IBMA 76-57, on March 24, 1976 (decision pending).

The second problem with the § 104(a) order is the lack of power to order the operator to affirmatively abate the danger.

In 1975, in Eastern Associated Coal Corporation, 4 IBMA 1, the Board of Mine Operations Appeals, the final voice of the Secretary in mine safety matters, ruled that an imminent danger order may not impose affirmative duties on a coal operator. In other words, under the imminent danger provision the Mining Enforcement and Safety Administration could close a mine because of imminent danger and keep it closed until the danger is corrected. However, it could not require the operator to correct the condition by forcing the operator to take certain measures. The case involved an unstable waste impoundment which the company conceded was an imminent danger. This should not be allowed. An imminent danger should be corrected as soon as possible even if it disrupts production, and the Secretary should have the power to order this done. H.R. 2, the strip mine bill, currently includes an affirmative obligation to abate imminent danger.

The third problem with imminent danger orders is that MESA has been unsure whether it can issue such orders where a pattern of violation or unsafe practices exists, rather than or in addition to, issuing imminent danger orders when a particular condition or practice is found. Congressman Perkins expressed himself eloquently during the Scotia hearings that it was his intention that Section 104(a) be used where a pattern of violation or unsafe practices existed. S.717 itself, or the legislative history, should make it clear that the

imminent danger order may be issued in such circumstances.

2. § 104(c). This provision provides for closure upon two findings of unwarrantable failure to comply with mandatory health safety standards.

In 1969, Congress stated that it intended "unwarrantable failure" to mean:

> "...the failure of an operator to abate a violation he knew or should have known existed, or the failure to abate a violation because of a lack of due diligence, or because of indifference */ or lack of reasonable care, on the operator's part."

Clearly, this is a standard of simple negligence. **/ The Board, however, has narrowed "unwarrantable failure" to situations where "reasonable men would conclude that the operator intentionally or knowingly failed to comply or demonstrated a reckless disregard for the health or safety of miners." ***/ Consequently, the use of § 104(c) notices and orders, and their deterrent effect, is now restricted far more seriously than Congress intended.

We suggest that this Committee adopt the definition of unwarranted failure now in H.R. 2:

> "'unwarranted failure to comply' means the failure of a permittee [operator] to prevent the occurrence of any violation of his permit [mandatory health or safety standard] or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit [mandatory health or safety standard] or the Act due to indifference, lack of diligence, or lack of reasonable care;"

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*/ H. Rep. No. 761, 91st Cong., 1st Sess. 68 (1969).

**/ Black's Law Dictionary (1968) defines "negligence" as "the omission to do something which a reasonable man...would do.... The failure to exercise reasonable care...[the] duty of every person to exercise due care in his conduct toward others from which injury may result."

***/ Eastern Associated Coal Corp., 2 IBMA 331, 356 (1974).

Other Areas of Concern

1. Section 301(c) of the Federal Coal Mine Act allow both operators and representatives of the miners to apply for modification of a safety standard. S.717 allows only operators to apply for a variance. This should be changed to allow representatives of the miners the same rights as they enjoy under the present Act.

2. S.717 as presently drafted weakens the right of a representative of the miners or a miner to obtain an inspection. Under § 103(g) of the 1969 Act a representative has a right to demand an immediate inspection; under S.717 the representative or miner can obtain an inspection only if the Secretary has reasonable grounds to believe that a violation or danger exists. This right to demand an inspection has not been abused by the representative; it has been invoked only 620 times in six years. There is no reason to weaken the provision.

3. The provision on the assessment of civil penalties for individuals should be broadened to allow civil penalties against those agents of the operator who violate the law or allow the law to be violated through gross negligence.

As a practical matter it has proven very difficult to show that anyone above a section foreman knowingly violated a standard. Therefore, the current provision for individual

civil penalties has been infrequently used.*/ A foreman may be ordered to mine coal by a superior who does not know or care what health or safety standards may be violated in the process. It is therefore important that the standard incorporate recklessness and gross negligence.

4. S.717 should be amended to include a provision allowing citizen suits and action for damages as were contained in Sections 112 and 113 of H.R. 5555 introduced by Mr. Hechler in the 91st Congress.

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*/ The Department of the Interior allowed four years to pass from the effective date of the Act before instituting a civil penalty action against an individual under § 109(c). As of September 1, 1976, sixteen § 109(c) cases have been "disposed of", and another seventeen are pending. Given the small number of cases, it is doubtful that the existence of the § 109(c) sanction has been brought forcefully to the attention of more than a handful of the supervisory individuals who routinely make crucial decisions concerning the health and safety of the nation's miners. As of September 1, 1976, twelve individuals have paid civil penalties under § 109(c). Ten of these cases were settled. Fines were imposed by ALJ decisions in the other two cases. The settlement amounts ranged from $100 to $3,000, with $960 the average amount paid. The two ALJ decisions imposed penalties of $500 and $700 (average: $600). There is no way under the present act to insure that in fact the individual (rather than the company) pays the assessed penalty.

5. S.717 restricts the right of a miner or representative to demand an inspection whenever he or she believes that a violation exists. Section 103(g) of the Act gives the miner a right to an inspection when he or she believes a violation exists. S.717 allows for an inspection only when the violation "threatens harm." There is no reason to restrict the right since it has not been abused in its broader form.

6. S.717 in making certain desirable modifications in § 110(b) proceedings, takes away an important right of the miner -- the right to attorneys' fees in cases where the Secretary determines that a violation exists. Presumably, the idea is that if the Secretary desires to prosecute the case, there is no need to award attorneys' fees to the miner for his representation. This is not the case, and indeed, the bill explicitly provides for employee participation in the hearing even when the Secretary is involved:

> "The complaining employee or applicant may present additional evidence on his own behalf during any hearing held pursuant to this paragraph." S.717, § 106(c)(2)

How is the employee or applicant supposed to be represented in such circumstances? He will have no money to pay an attorney (he is out of work), and a contingency fee is not appropriate.

Also, a miner should not be totally dependent on Interior representation. To put it kindly, the Interior Department prosecution of mine safety cases in general has been less than tough; there is no reason to expect the representation to differ in discrimination cases. The miner must have his or her own attorney.

CONCLUSION

There are of course many other problems in the field of coal mine health and safety which we have not discussed in the time available today. We chose the issues we have presented today because in our judgment the need for change is most obvious. There is no sound reason not to include the changes in the proposed legislation.

We thank you for the opportunity to appear before you today.

The CHAIRMAN. Tomorrow morning we will come in at 9 o'clock. Again, we are under Senate limitations for our hearing tomorrow morning. We hope to be able to reach all witnesses within the time allotted tomorrow.

[Whereupon, at 11:32 a.m., the subcommittee recessed, to reconvene at 9 a.m. Friday, April 1, 1977.]

FEDERAL MINE SAFETY AND HEALTH AMENDMENTS ACT OF 1977

FRIDAY, APRIL 1, 1977

U. S. SENATE,
SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON HUMAN RESOURCES,
Washington, D. C.

The subcommittee met, pursuant to recess, at 9 a.m. in room 4232 Dirksen Senate Office Building, Senator Harrison A. Williams, Jr (chairman), presiding.

Present: Senators Williams and Javits.

The CHAIRMAN. Come to order, please.

The Subcommittee on Labor of the Committee on Human Resources is today holding its third day of hearings on S. 717, the Federal Mine Safety and Health Amendments Act of 1977. This bill is our response to our current inadequate mine safety and health program.

Among today's witnesses will be spokesmen of the Departments of Interior and Labor. In the Interior Department the Mining Enforcement and Safety Administration is responsible for enforcing our current mine safety laws. That agency has developed a group of skilled and highly motivated inspectors and professionals to enforce these laws. Unfortunately, in the past these inspectors and their efforts were often foiled by inadequacies of the statutes which they enforce. It is these inadequacies which this bill is designed to correct. It is our hope that the legislation which we are now considering will provide the administrative agency with the tools which are needed to provide meaningful and lasting protection for our Nation's mines.

S. 717 would also transfer mine safety and health enforcement responsibilities to the Department of Labor. This is the executive agency which has as its sole responsibility the protection of workers. Thus the Department of Labor, in our judgment, is the logical place for a comprehensive mine safety and health program such as the one contained in this bill.

We look forward to the constructive suggestions which we know the Interior Department will offer to this committee. Its experience with our current laws and its insight should greatly benefit our consideration of S. 717.

The testimony of the Labor Department, which would assume the responsibility for enforcing the Federal Mine Safety and Health Act will, in my opinion, be very helpful to us. We now have an administration firmly committed to the safety and health of American workers. Their support and assistance is obviously very encouraging to our committee and those of us who have been about this effort for

a decade, at least. Therefore, I am certain that today's witnesses will be of great assistance to us in achieving our goal of comprehensive and meaningful mine safety and health programs.

Senator Javits and I have been involved in this for a long time. We have been together for better than a decade on this particular issue. I will now turn to Senator Javits.

Senator JAVITS. Mr. Chairman, I just want to welcome on behalf of the minority, the very distinguished Secretary. It isn't often that he has any reason to appear before this committee and I am delighted that he has come here today on this mission which I believe will bring the Congress and the Executive together.

Thank you very much.

The CHAIRMAN. We appreciate it and we are very much indebted to the Secretary of the Interior for being here to open this most important day of hearings for us. I am sure we will look back and say that this day and all that we added to our record this day will be one of the key elements in the development of all that is necessary for the maximum of safety and health in the mines of our Nation.

Mr. Secretary, we welcome you.

STATEMENT OF CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, ACCOMPANIED BY ROBERT E. BARRETT, ADMINISTRATOR, MINING ENFORCEMENT AND SAFETY ADMINISTRATION (MESA); WILLIAM D. BETTENBERG, ACTING DEPUTY ASSISTANT SECRETARY, ENERGY AND MINERALS, DEPARTMENT OF THE INTERIOR; THOMAS J. SHEPICH, DEPUTY ADMINISTRATOR, MESA; AND EDWARD M. GREEN, SPECIAL ASSISTANT TO THE ADMINISTRATOR, MESA

Secretary ANDRUS. Thank you very much, Mr. Chairman and Senator Javits. It is a pleasure to be here today to urge the enactment of S. 717 at the earliest possible moment.

The Department of the Interior and the administration consider the bill an urgent, high priority. We pledge our full support and full efforts to insure swift passage.

Before beginning my testimony, Mr. Chairman, I would like to express our admiration and appreciation of the leadership that you, the chairman, and the committee have provided during the past 4 years in developing this landmark legislation.

I will outline the administration's support for the bill and the suggestions we have for improving it. Mr. Robert E. Barrett, our MESA Administrator, will follow with a more detailed explanation of why the bill and our recommended amendments are so necessary. We also have a full panel of departmental and MESA officials to answer any questions you or your committee may have following Mr. Barrett's presentation.

With us today we have Mr. William D. Bettenberg, who is Acting Deputy Assistant Secretary, Energy and Minerals, Department of the Interior; Mr. Thomas J. Shepich, Deputy Administrator of MESA, and Mr. Edward M. Green, special assistant to the Administrator, MESA.

Though I want to spend most of my time this morning addressing the substance of the bill, I know everyone is very interested in the MESA transfer issue and the administration's position on that matter.

The President decided yesterday to support transfer. He informed me that he feels he has a commitment to do so. Knowing my strong belief that MESA should be retained in Interior he authorized me to express my own view.

Mr. Chairman, I support the President's decision. I recognize that there are pros and cons in this matter, both sides of the issue, but the administration's position is solidly that of supporting the transfer.

Now let me turn to why we support the bill and the other provisions in the bill and the work that you and your committee members have done in preceding years.

The number of fatalities and serious injuries in the Nation's mines are still unacceptably high. Despite repeated attempts by Congress to strengthen health and safety laws, studies and hearings by the committee and the Department document that the present Coal and Metal Acts are not as effective as they need be. The increase in MESA issued violation notices from 45,000 in 1970 to 250,000 last year indicates increased enforcement effort that we have been going through, but it also indicates insufficient incentive for operators to correct and prevent health and safety violations before the inspectors arrive at the mine. Our studies indicate that all to often the operator finds it cheaper to pay the penalties than to strive for a violation-free mine.

We believe the law must be written and implemented so as to give the operator a strong self-interest to provide a working place that is as safe as possible. The improvement that S. 717 will make over current law are absolutely necessary to provide that self-interest on the part of the operator. Because of the expected increase in coal production during the next several years, the legislation is even more urgent today. Industry-wide compliance with strong health and safety standards must be a basic ground rule for increased production.

S. 717 combines some of the best features of the Coal Mine Health and Safety Act, the Metal and Nonmetallic Mine Safety Act, and the Occupational Safety and Health Act. It adds to these some new enforcement concepts based on the problems we have experienced with the current laws under which we function.

There are a number of essential elements in the bill that must not be compromised. These include:

One statute for both coal and metal/nonmetal mines, affording equal protection for all miners and a common regulatory program for all operators;

A statutory general duty for operators to provide workplaces free from hazards likely to cause death or harm;

Mandatory time schedules for standards development to expedite the rulemaking process;

Increased emphasis on development of health standards to protect miners from toxic materials and other harmful physical agents;

Strengthened enforcement mechanisms;

Mandatory training standards, and, finally,

Improved procedures for assessment and collection of civil penalties.

The administration does have some suggestions for improving and strengthening the bill that have been developed by the Mining En-

forcement and Safety Administration and the Department of the Interior.

We are concerned that title II of the bill in some instances unnecessarily changes existing rulemaking and enforcement procedures, and that such changes could hamper good implementation and enforcement. A common denominator in our suggestions, therefore, is to retain within the fabric of S. 717 existing provisions of the Coal Mine Health and Safety Act that have proven clear and effective.

In the area of rulemaking, we urge that all references to "advisory committees" be eliminated. Mr. Chairman, it has been our experience with advisory committees that they tend to become focal points of special interest groups and delay the rulemaking process. All too often the result is a weak consensus recommendation that fails to provide the basis for effective standards. We believe the publication, public comment, and hearing procedures provided in the bill afford the best forum for participation by all parties in the standards development process.

We endorse the need for a mandatory timetable for standard promulgation. Some of the time allowances in S. 717, however, seem too short. Under S. 717 it would take about 3 months, or 6 months, in the event of a hearing, to promulgate a standard after publication of a proposed standard. Our amendments would extend these time periods to 4 months, or to 8 months in the event of a hearing, but would eliminate the 5 to 7 months involved in the advisory committee process.

While we endorse the provision permitting variances for research purposes, we recommend that the remaining variance provisions in the bill be deleted in favor of the existing variance procedure in the Coal Act. The existing provision is workable, understood by the mining community and not open to abuse.

The administration strongly supports the bill's requirement for a minimum of four annual complete inspections of all underground mines. We would add to this a requirement that the Secretary must develop guidelines for complete inspections of surface mines and additional complete inspections of underground mines based on the degree of hazard at the individual mines and their health and safety records.

This amendment is not intended to dismiss the hazards of surface mines, nor do we contemplate that MESA's current inspection efforts at surface mines, which averages three annual complete inspections at surface coal mines and one at surface metal/nonmetal mines, will be reduced. Our experience indicates that MESA should be given flexibility to concentrate its resources to the maximum extent possible at mines that present the greatest hazards. It has established an excellent capability to do this through its new mine profile system.

Section 104(e) authorizes representatives of the operator and miners to accompany the inspector during an inspection. We consider it vitally important that this be extended to participation in pre- and post-inspection conferences as currently provided under the Coal Act.

Section 105(c)(2) provides that an unwarranted failure withdrawal order cannot be lifted until "an inspection of such mine discloses no such violations". We propose that this provision be clarified and strengthened so that the order cannot be lifted until an inspection of the entire mine discloses no violations of any health or safety standard.

We also believe that the meaning of "unwarranted failure" should be clarified to prevent the use of this provision from being hampered by legal disputes and litigation. We have provided the committee with draft language.

Section 107 prevents the lifting of an imminent danger closure order until an inspector finds that the imminent danger no longer exists. We, Mr. Chairman, would strengthen this provision so that the inspector also must find that the conditions and practices giving rise to the imminent danger have been abated. The intent of this amendment is to emphasize that the root cause, as well as the immediate symptom, must be corrected. Again we have drafted language, Mr. Chairman, and submitted it to your committee for your consideration.

MESA has made substantial improvements in civil penalty assessment and collection. We are preparing other administrative reforms. S. 717 will substantially improve our ability to make these reforms. So we urge, in addition, that the current $10,000 maximum for civil penalties be raised to $15,000 and that the provision for discretionary assessment of up to $1,000 a day for failure to abate be made mandatory. We also recommend that an 8-percent interest rate be charged against tardy civil penalty payments.

Section 116 provides for mandatory safety training standards for all miners. We heartily concur in the need for mandatory training standards, but believe that they should be expanded to training in recognizing and avoiding health hazards and in the statutory rights afforded to miners and their representatives under the act.

Mr. Chairman, we have studied the bill carefully and have a number of other amendments to further strengthen the bill and make technical clarifications. These will all be submitted formally to the committee very shortly, as soon as we obtain full clearance from OMB.

Mr. Barrett will now provide a more detailed account of why MESA, the Department, and the administration so strongly support S. 717 and the amendments I have summarized. His presentation will be brief and, I think, very helpful. Following his presentation, we will be prepared to respond to any questions you or any members of your committee may have.

Before Mr. Barrett begins, I want to emphasize as strongly as I can that we desire to work closely with the committee to perfect the bill and ensure its swift enactment. We stand ready to provide all assistance requested of us.

Mr. Chairman, I would like to express my appreciation to your staff, also, because they have worked these past weeks very closely with Interior Department personnel to bring about what we think needs changing. They are familiar with all of our recommendations. We made the material available, but without their help we would not have made this progress. Your staff has performed yeoman duty.

The CHAIRMAN. I appreciate that. It has been, a matter of committee policy and action to promote a very close relationship between the committee staff and the Department and its MESA staff director. We are happy that we did have this relationship through this period of development and consideration of this very comprehensive bill designed to bring new strength to our basic mining law. You have come to us with many suggestions to improve our product and strengthen

it, and we know more is to come, as you say, after you obtain full clearance from OMB. We will talk with Mr. Barrett later, I am sure, as to just how much time we should expect it will take to have your full presentation.

We appreciate this magnificent statement you have given us to consider, and it certainly will be considered.

I don't have any questions at this time.

Senator Javits?

Senator JAVITS. I don't wish to detain the Secretary. I am sure the operators are going to claim that the strictures we are putting on them in this bill may be of such character as to materially interfere with sustained production. For example, the suggestion which is made here that there shall be no violation of any health or safety standard before an unwarranted failure withdrawal order can be lifted—"no," not even "substantial," just "no." So what I wish you would think over, Mr. Secretary, because we wish to be intelligent about this, is whether or not there would be any justification to any claim that the provisions which you urge upon us will unduly interfere with production or sustained productivity, and advise us in due course. There is no hurry, but we will take it into consideration in connection with the totality of everything you say. That struck me particularly, because I am a lawyer and I know something about inspectors and when you say "no," that means "no" to an inspector, and if a couple screws are out of a bracket, they may be critical and they may not—we don't know—but in any case I leave that with you.

Secretary ANDRUS. Mr. Chairman, Senator, we will, as you suggest take that into consideration in the deliberations. Thank you for calling it to our attention. The reason that language is there is because our primary concern is with the safety of those miners and yes, we considered the "no" provision, but we will be happy to give it consideration again.

Senator JAVITS. We agree with you about the prime consideration, but I don't think we want to strain that beyond any reason.

Secretary ANDRUS. Mr. Chairman, if it meets with your concurrence, we had planned to yield some time to Mr. Barrett for a presentation of our concerns. If it meets with your pleasure, we can do that now.

The CHAIRMAN. We will proceed now to Mr. Barrett.

Secretary ANDRUS. Then we will make ourselves available for any questions you might have.

Mr. BARRETT. Thank you, Mr. Chairman.

During the course of my presentation, we will have to my left, to your right, some charts to point out some of the things I am saying as I go along with my prepared statement.

The clear and urgent need for rapid enactment of S. 717 exists because the tragic facts of life in the mining community are that, in spite of increasingly strong Federal actions, far too many mine operators fail to provide safe and healthful working places for the miners whom they employ. There is no question that much remains to be done to better protect miners against health and safety hazards. Substantial improvements to existing mine health and safety legislation, such as those contemplated by S. 717, are absolutely necessary to increase mine operator incentive to comply with health and safety hazards.

MESA has as its first and only responsibility the administration and enforcement of the regulatory provisions of the Federal Metal and Nonmetallic Mine Safety Act and the Federal Coal Mine Health and Safety Act of 1969. When the Federal Metal and Nonmetallic Mine Safety Act was signed into law in 1966, it was widely regarded as forward looking, sound legislation, containing many pioneering provisions in the field of health and safety. The Federal Coal Mine Health and Safety Act of 1969 remains a benchmark of legislative excellence.

Although substantial progress has been made under these two statutes in reducing fatalities and injuries, mining is still one of the most hazardous occupations in the country. In coal mining, fatalities have been reduced from almost 1,000 miners killed each year in the 1940's to 155 in 1975 and 141 in 1976. Nonfatal injuries have been reduced from about 38,000 in 1950 to about 10,000 a year today. The rate of these injuries has also been significantly reduced since the enactment of the 1969 Coal Act. The rate of fatalities in coal mines has been reduced from 1.00 per million man-hours to exposure in 1970 to 0.34 for 1976.

Incidentally, as of this morning we have 17 less fatalities in coal mines today than we did at this time last year, and that includes the Tower City disaster.

MESA's traditional approach to reducing fatalities and injuries has been to conduct as many health and safety inspections as possible. The Coal Act requires that a minimum of four health and safety inspections be made yearly of each underground coal mine.

In addition, special inspections of excessively gassy and particularly hazardous mines are carried out, and numerous inspections and investigations, including roof control, ventilation, electrical, and transportation are made as required by the conditions and practices at the individual mine. MESA policy requires at least three complete health and safety inspections each year of surface coal mines and as many special inspections and investigations as may be required to gain compliance with the act.

Although enforcement of mine health and safety regulations has always been the primary focus of MESA's programs to make mining a safer and more healthful occupation, our experience has shown that enforcement alone is not enough to insure a safe, healthful working environment for the Nation's miners. MESA cannot station an inspector alongside every miner around the clock. Therefore we must utilize our personnel in the most efficient way, which means directing resources toward critical areas.

Because of this basic management decision, and, furthermore, acting on what has been learned thus far from the twin explosions at the Scotia coal mine in March 1976, we have initiated a series of wide-ranging changes in coal mine enforcement efforts.

One recent step we have emphasized in our regular enforcement program is to increase the number of impact or "blitz" inspections. Blitz inspections are conducted by a team of inspectors who move into a mine to examine many or all of the working sections of the mine simultaneously. This enables us to get a total picture of the health and safety conditions throughout the entire mine and eliminates both the

possibility of an inspector missing a dangerous section of the mine on a regular inspection and an operator changing the ventilation pattern in one section of the mine.

Last year, following the initiation of this program, we conducted more than 450 blitz inspections and as a result of these inspections we issued about 8,000 notices of violations and 460 closure orders. During our regular inspections prior to this we averaged about 1.1 violations per inspection. During our blitz inspections, as you can see, we cited nearly 20 violations per inspection and issued, on the average, one closure during such inspections.

As a result of Scotia, we have also intensified our review of ventilation and roof control plans submitted by coal operators to MESA field offices. MESA inspectors have redoubled their efforts to closely examine training plans to make sure they are being carried out to the letter by mine operators. We have reviewed 8,101 ventilation plans for the 2,000-some coal mines and we issued 3,370 notices of violation against operators for violation of ventilation and also 138 closure orders. In training plans, we looked at 4,593, issued 233 notices, and 28 closure orders to mines which had not either complied with nor submitted training plans.

Another step we have taken to direct our resources toward critical areas is to expand the "accident prevention program" for coal mines with disabling injury rates above the national average to also include all mines employing 150 or more workers underground. We are now dealing with these problem mines by requiring additional training, more inspections, and other accident prevention techniques. MESA's inspectors concentrate their efforts at these mines until their disabling injury rates drop.

We presently have two programs. One is a hazard analysis and accident prevention program in coal mines and a special accident prevention program in metal and nonmetallic mines. Last week we had our inspectors at the Academy at Beckley and put on a new training program to help them better identify hazards at mines so that we can head off the hazards before they do become violations.

Tied in with that we have a new mine profile rating system which we have developed over the last year, thus helping us to identify problem mines by evaluating the disabling injury frequency rate, the record of compliance with Federal health and safety regulations and the health and safety management system of the rated mine. This system does not rate mine against mine, but, rather, rates each mine on its individual performance during the preceding 12 months. The rating system will allow us to deploy our inspection forces more effectively by concentrating them on mines having the most serious health and safety problems. While our initial targets for this system have been larger coal mines, we are now moving toward using it for smaller mines.

These specialized enforcement programs have helped us to pinpoint safety hazards and will continue to permit us to focus our resources on them, and head off potentially dangerous situations for miners.

One enforcement tool which has been used in the coal mine health and safety program is the assessment of civil monetary penalties. This program has been controversial and beset with difficulties since its inception.

As you are aware, the Coal Act requires that a monetary civil penalty be assessed for every violation of the mandatory health and safety standards. The act also provides broad legal remedies for coal operators to appeal an assessed penalty. The operator can appeal a fine before an administrative law judge of the Department's Office of Hearings and Appeals. The operator has further recourse under the Act through a de novo trial by jury in Federal court to contest a penalty sought by the Secretary. Litigation of contested penalties in Federal courts is handled, of course, by the Justice Department.

From 1970 to date, as you can see on the charts which we have, we have issued about 580,000 violation notices to coal mine operators and each has been assessed a civil penalty. As of the close of 1976, MESA has collected about $25 million in penalties. Incidentally, $18 million of the $25 million has been collected within the last year and a half. There are presently $5 million in proposed penalties awaiting administrative appeal by operators either at an informal review or a formal hearing before an administrative law judge. An additional $5 million in assessed penalties are awaiting collection in the Federal courts.

We are currently implementing an improved automated data processing and management information system. Proposed assessments for 60,000 violations are incorporated in the implementation of this system. The assessment program has been beset by problems, which we are still struggling to overcome. Federal court injunctions caused lengthy delays which resulted in a backlog of cases numbering at times in the tens of thousands. Changes in assessment procedures to accommodate court decisions further complicated the assessment program.

In August 1974, a very comprehensive assessment program was implemented to overcome both adverse court decisions and ineffective portions of the existing program. Since that time substantial improvements have occurred in the assessment and collection of civil penalties.

We still face difficult and complex problems in this area. While penalties are mandatory for each violation, one of the most critical problems we face is to determine what is a meaningful, effective penalty that will insure the operators' compliance with health and safety standards.

I might also add at this time that we have automated our penalty assessment program. I think that by the 1st of July we will have all of our backlog accommodated and we will be on stream to assess penalties on a very timely basis and to me that is one of the keys to the total penalty process, to assess the penalty and bring it to the attention of the operators while it is still fresh in their minds. In the past we have had backlogs in our assessment program that allowed the assessment of a penalty to be years away from the citation of the violation, so the penalty really lost its effectiveness so far as a deterrent to violations is concerned. We hope to have that problem accommodated within the next 2 or 3 months, or at least helped in some respects.

In the metal and nonmetal mine health and safety program, the inspection force has grown from fewer than 100 inspectors in 1972 to about 340 inspectors today. As inspector presence increases at noncoal

mines, and as the quality and uniformity of inspections improve, more notices of violation and closure orders were issued. Notices of violations increased from 45,500 in 1971 to 113,400 in 1976. Closure orders jumped from 56 in 1971 to more than 4300 in 1976. As enforcement activity increased, the number and rate of fatalities declined. From 1972, the year 91 men lost their lives as a result of a mine fire at the Sunshine Mine, the number of fatalities has decreased from 234 to 113 in 1976. While this gradual program expansion has helped bring about better mine health and safety conditions, MESA must marshall its limited metal and nonmetal inspection resources to strike a prudent balance between covering as many mines and mills as possible and providing greater attention to special problem areas of the metal and nonmetal mining industry, such as mines with high injury frequency rates.

In 1975 we initiated a limited special accident prevention program for noncoal mines to give us the ability to strike such a balance. A group of mines, selected on the basis of injury frequency rate and size, were selected for redoubled attention and inspection, job safety analysis and training. Results have shown an overall reduction of accidents and injuries at mines covered by this program, but we must say that results achieved at these mines have varied considerably, depending on the amount of cooperation by management.

MESA targets underground noncoal mines for special inspection and training efforts because their more hostile working environment has historically marked them with a much higher frequency rate than surface operations. One promising development is that the disabling injury rate has shown a recent drop at underground mines—from about 45 million man-hours of exposure in 1973 and 1974 to below 38 in 1975. However, while the underground record has shown improvement, these mines still account for a third of all reported disabling injuries, even though they represent only about 15 percent of the total man-hours of work or exposure reported by the entire metal/nonmetal mining industry.

There is a growing awareness and concern by the public about health hazards in the metal and nonmetal mining industry, problems that not only affect the mine or mill worker, but that may also affect areas adjoining a mining operation.

I don't have to elaborate on the Rockville quarry which had the asbestos problem.

The lack of data correlating occupational illnesses with environmental conditions is one major problem in the metal/nonmetal health program. Cause and effect data on injuries can be determined or analyzed from data collected on a routine basis, but similar information on occupational illnesses can only be obtained through special studies.

These studies require a great deal of manpower and funding, and MESA's ability to conduct these studies is at present limited. Our metal and nonmetal health program efforts have, however, been increased in the past few years, as witnessed by the fact that of the 31,000 inspections made in 1975, some 8,000 involved industrial hygiene sampling to insure compliance with established health standards, including those on dust, noise, radiation and toxic gases. To best utilize our limited inspection force manpower, MESA's approach toward

health problems is similar to that of its safety activity—to deal with health problems selectively.

At the majority of the mines and mills, MESA surveys and spot samples limited areas and a limited number of workers, depending on the areas and a limited number of workers, depending on the degree of suspected health hazards at the operation. And similar to MESA's metal and nonmetal mine safety program, we are adopting a comprehensive health inspection program under which operations with high health risk potentials will be pinpointed.

While accident experience in the metal and nonmetal industry has shown marked improvement as we have gradually built up our program under the existing statute, the program is still understaffed and underfunded. If we are to bring the metal and nonmetal mine health and safety program up to a parity with our coal mine health and safety program and, most importantly, improve the ability of both programs to better protect the health and safety of the Nation's miners, we must not only have better funding and increased manpower, but also strengthened legislation. When compared with the Coal Act, the Metal Act lacks many of the incentives to insure that operators provide miners with the safest and most healthful working place.

We, therefore, specifically endorse the concept contained in S. 717 of having one mine health and safety statute for the entire mining community. Aside from the need to insure that health and safety standards are designed to take into account distinctive mining technologies, there is little rationale for maintaining two separate and distinct mine health and safety statutes. While we believe that mining presents unique health and safety hazards, there is a clear need for all miners to be afforded equal protection and for all mine operators to be governed by a common regulatory program. Not incidentally, the mandates of S. 717 would operate as an incentive to enable the metal and nonmetal mine health and safety program to become coequal in budget and manpower emphasis with the coal mine health and safety program. Departmental and MESA experts, along with other interested Federal agencies, have conducted a thorough review of the bill and as a result we urge that a number of provisions be amended to strengthen enforcement and other inducements for compliance, as well as to make the bill more administratively workable. Secretary Andrus has already discussed some of these suggested improvements generally and I would like at this time to elaborate on some of his points as well as to raise some other points.

Although S. 717 is an amendment to the Federal Coal Mine Health and Safety Act of 1969, and retains many of the provisions of that landmark legislation, we are concerned that title II of the bill in some instances unnecessarily changes sound existing procedural and enforcement concepts.

Such changes would have the short term effect of impeding enforcement and retarding compliance by the mining industry. Our experience with existing mine health and safety legislation makes us acutely aware of the initial problems which arise when the Congress creates new standards and procedures to regulate an industry. The entire industry must become familiar with new concepts, terms, and

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procedures. An organization must be assembled and the people trained to interpret, implement, and enforce the new law. An interpretive body of law must be developed on a case-by-case basis by a new administrative review mechanism and the Federal courts. As this difficult process advances, industry compliance steadily improves since clear, unambiguous Government interpretation and enforcement is necessarily precedent to industry understanding and compliance. We have new reached the point through significant time and effort where operators, miners, inspectors, attorneys, and judges have developed a working familiarity with existing mine health and safety legislation. A common denominator, therefore, in our suggestions to improve and strengthen the bill is to retain, within the fabric of S. 717, existing provisions of the Federal Coal Mine Health and Safety Act of 1969 which have proven to be clear and effective.

For example, in the area of rulemaking, in addition to our strong belief that all references to advisory committees be eliminated, we support the need for specific mandatory deadlines in the rulemaking process. We agree that in too many instances standards have not been promulgated expeditiously.

However, we believe that the time frames specified in S. 717 are overly short and should be generally extended by 30 days. The bill places substantially increased emphasis on the need to develop effective health standards to protect miners from the adverse effects of toxic materials and harmful physical agents used in the mining industry. We strongly endorse these provisions.

While we endorse the provisions of S. 717 permitting a variance to be granted for valid health or safety research purposes, we would recommend that the remaining variance provision in the bill be deleted in favor of the existing variance procedures of the Federal Coal Mine Health and Safety Act of 1969. The existing provision is strong, workable, and understood by the mining community.

In the area of enforcement and compliance, we generally agree with the provisions of the bill.

We recommend, however, that a clear definition of the term "unwarranted failure of an operator to comply" be developed to enable more effective use of this enforcement sanction. More specifically, we suggest that the bill be amended to provide that for purposes of section 105(c) evidence of unwarranted failure of the operator to comply shall include, but not be limited to, frequent violations which could have resulted in death or serious physical harm, and that the bill further provide that the Secretary may find another such violation to constitute an unwarranted failure on that basis alone. We also recommend a provision requiring that a mine closed because of unwarrantable failure of the operator to comply not be permitted to reopen until an inspection finds no health or safety violations in the entire mine.

In the area of assessment of civil penalties, we believe that S. 717 substantially improves our ability to insure that the dollar amounts of civil penalties are high enough and are collected quickly enough to operate as effective incentives for operator compliance with the law. We urge, however, that the current $10,000 maximum for a civil penalty be raised to $15,000. We further suggest that the provision of

section 111(b) of the bill permitting discretionary assessment of a civil penalty of not more than $1,000 for each day during which an operator fails to abate a violation beyond the time permitted for its correction be made mandatory. We also recommend that an 8-percent rate of interest be charged against any person who fails to pay a final assessment order.

S. 717 provides basic statutory rights to miners which are developed from the existing Federal Coal Mine Health and Safety Act of 1969 and OSHA. These provisions include walkaround rights and the right to be protected against discrimination or discharge on health and safety issues. We endorse these provisions and urge that they be strengthened to insure, first, that miners or the authorized representatives of miners not only be permitted to accompany the Federal inspector during the physical inspection of any mine, but also to participate in any conference held at the beginning or conclusion of an inspection; second, that the discharge and discrimination safeguards in the bill be expanded to include within their scope the representatives of miners; and, third, that amendments be made to insure that miners and their representatives are given notice of enforcement actions, and the administrative and judicial proceedings relating thereto.

In conclusion, these are the highlights of the strengthening improvements we suggest be made to the bill. Our review has indicated that other provisions require technical clarification and we are prepared to work closely with the committee in strengthening and improving the bill. We are confident that a meaningful dialogue between the administration and the Congress will result in strong, effective mine health and safety legislation which can be quickly enacted into law for the benefit of the entire mining community.

Thank you very much, Mr. Chairman, for hearing us. If you have any questions, we will attempt to answer them for you.

The CHAIRMAN. Thank you very much, Mr. Barrett. Your Department's offer to be in a meaningful dialogue on the refinements of the provisions of this bill is greatly appreciated. Some in this room will recall that the Coal Mine Act of 1969 certainly presented a similar opportunity that both the committee and the Department took. There was the midnight watch and lots of round-the-clock sessions, not in hearing, but just hammering out the specifics and provisions of these various aspects.

Mr. BARRETT. We have been going through that same exercise the last few weeks.

The CHAIRMAN. I was just looking at the date of introduction here, which was February 11, so it seems like you must have been working round the clock on the bill. It brought you to, I am sure, a focus on the many things that have been developing in your minds in the administration and this just gave impetus to that.

Mr. BARRETT. These are some of the things I have been wanting to do for sometime.

The CHAIRMAN. Yes, and I see so much in what you say reflects things we have learned together in mine inspections.

I missed part of your testimony, but I did not hear any reference to your relationship on the health side with NIOSH. What are your

comparative roles as you deal with some of the unknown in the health problems and some of the knowns, too?

Mr. BARRETT. Under the present statute the health standards are introduced and promulgated by the Secretary of HEW. We have found that NIOSH apparently is quite understaffed and underfunded. At least that is the implication I get when it comes to their response to the health problems as we know them in the mining industry.

Presently we have a joint study being conducted with NIOSH and also the Bureau of Mines in the metal and nonmetal industry to try to isolate those health hazards that are associated in hard rock mining. We are finding and learning a lot of things from those studies and we are going to extend that into the coal mines. That is, again, a very comprehensive study whereby we do environmental studies as well as studies of the individual miners to try to track their physical well-being with the types of exposures that they receive. We do work very closely with NIOSH in the development of standards.

The CHAIRMAN. I just don't get the feel for how this is accomplished. This is a mystery to us.

Mr. BARRETT. Normally we, if we find a problem that appears to be a health hazard—diesels is a good example.

The CHAIRMAN. What is a good example?

Mr. BARRETT. Use of diesel equipment in the mines is a very good example. There are so many unknowns so far as the effect that diesel emissions have on a person's lungs. Because of this unknown quantity we have been conducting studies at selected mines. NIOSH has conducted medical studies in the past on individual workers so that we can track their medical history through time and exposure to products of diesel equipment, dust, silica, radon daughters in the uranium mines, et cetera. The work that NIOSH is doing through this study, with the medical results, will justify the setting of new standards as they affect the hard rock miners, as well as the coal miners.

The CHAIRMAN. We did have some testimony—you talked about the radon daughters and we heard quite a bit about this is an increasingly known hazard. Unfortunately there is some lack of knowledge as to just how to deal with this situation.

Now in the study, is NIOSH charged with first responsibility to look at this area?

Mr. BARRETT. Yes.

The CHAIRMAN. NIOSH tries to understand it and what effect it has in those that are working in the mine.

Mr. BARRETT. NIOSH looks at the medical side, the effect of radon daughters or radon exposure and we look at the environmental aspect. That summarizes the cooperative agreement we have presently with NIOSH.

The CHAIRMAN. Physically are they in New Mexico? Do they have a presence there?

Mr. BETTENBERG. Mr. Chairman, one additional point which I think is what you are getting at, the current Coal Mine Safety Act essentially requires that NIOSH establish health standards. The Department of the Interior cannot independently promulgate health standards and we found that to be a weakness under the current legislation. That would be remedied under S. 717 and we endorse that provision. It would give NIOSH the opportunity to continue to make

recommendations, but the Secretary on his own would be able to start promulgating regulations where he saw a problem and didn't have action out of NIOSH.

The CHAIRMAN. Right now, you recall, NIOSH has the authority to establish the standards in coal, but not in metal and nonmetal——

Mr. BETTENBERG. We can promulgate standards in metal and nonmetal, but we can't in coal right now and we find that to be a weakness in the current law.

Mr. BARRETT. S. 717 corrects that weakness.

The CHAIRMAN. In both areas?

Mr. BARRETT. Yes.

The CHAIRMAN. NIOSH is still there to make suggestions?

Mr. BARRETT. Yes, sir.

The CHAIRMAN. You say that they are understaffed?

Mr. BARRETT. That is the impression that I get. Dr. Finklea would appreciate my answer to that question. That is the impression I get from the people I deal with.

The CHAIRMAN. Well, we get that impression, too, when we look at the number of toxic elements that have been studied and the number of standards that have been promulgated on the findings of those studies. It is minimal compared to the number of substances that are offensive here. We are told that there are hundreds of agents out there that are health problems and the standards that have been established to deal with these problems were what—25 to 30—and I don't know if I am off or in the right ballpark on these numbers.

Mr. GREEN. If I might elaborate for a moment on that issue, both statutes presently give the Federal Government authority to develop health standards, but I think one of the major strong points of S. 717 is that because of the increased emphasis placed on the mandate to identify and promulgate standards on toxic elements and harmful physical agents that the statute, in effect, will operate as an inducement and operate as a much more effective emphasis in that area and enable the Federal agencies to do a much more effective job to identify and promulgate standards to protect the miners that are exposed to those kind of difficult situations. In that sense it will be a tremendous improvement over existing law.

The CHAIRMAN. I think the clear and most unequivocal statement that an advisory committee should not be part of standards is obviously arrived at unilaterally, that is, without any advisory committee input, I would say.

Secretary ANDRUS. Mr. Chairman, our experience has been, not only in this field, but other fields, that many times those advisory committees are, if not dominated, certainly influenced by some of the operating trade associations and others, and when you have to put those on the front end of the system, it leads to a longer period of bringing your rules and regulations into effect. Many times, from our viewpoint, the impact is lessened because of compromises that are made within the advisory committee and, yes, that decision was arrived at without the benefit of some of the interests that I referred to having input into our testimony, but they have had a lot of input into our testimony in the past and that is slowing down now.

The CHAIRMAN. I appreciate that statement.

There is one area where I wonder whether there would be any logic to have the benefit of either a formal advisory committee or informal opportunity to discuss the training programs. We get a lot of testimony here from people who operate mines and they feel as through they know their business and recognize that training is necessary. Is there anything to be gained by bringing these people into the development of training programs?

Secretary ANDRUS. Mr. Chairman, let me say, if I understood you correctly, I think you said an informal, where we were not tied to a time element, and the answer to your question is yes, I think they do know a lot about their business and I think they should have the opportunity for input into that discussion, but certainly not into a mandatory extension of time limit or where they have any impact to where the department or agency must in fact follow what they say. We should have the opportunity to seek out the information that they will provide us with and then make our determination within the training or the guidelines that are put together by the Department.

Mr. Chairman, do you have any objection if the Assistant Secretary Bettenberg, if he were to present his ideas?

Mr. BETTENBERG. Under S. 717 and current procedures there is ample opportunity for submitting comments on any proposed standard and on demanding hearings so you get a further input both from the workers' side and the industry side with regard to the feasibility, problems, recommendations and so forth for any standard that is promulgated.

Mr. BARRETT. I would like to comment on the mandatory training because that is something that is kind of near and dear to me. We finally got our regulations proposed last fall and we have had more comments on mandatory training than any other comments that I have ever seen in the history of the Coal Act.

Every comment begins with the introductory phrase that "we are for training and we believe training is great, but—" and then there are about 14 pages of reasons why people can't or don't feel that training should be conducted. I feel quite upset whenever people talk about the training or need for training. I think it is quite obvious and should be obvious to everyone, industry, labor and us, that our miners are not receiving proper training.

I have had meetings with the coal operators and also the union people. They have asked for a committee to be assembled to look at training. Such committee is being formed and they are going to be looking at training in other countries, to see how we compare with training elsewhere. I still believe that with the influx of the new miners, the new work force, the new people that are entering the industry, people who are not traditionally from mining families, we have to accelerate our training programs. We will be coming out very shortly with mandatory training regulations that require certain basic training.

I think it is very unfair to send a young man into a coal mine or any other mine after he has 15 or 20 minutes of training on how to use his self-respirator. I don't think that is either human or fair to the industry as a whole to allow this kind of a thing to happen. As long as I am the Administrator, I am going to move forward on mandatory

training and if we have it in S. 717, all well and good, but meanwhile we are going to continue with our venture into the training area.

The CHAIRMAN. One of our witnesses was talking about training and investing 40 hours in a comprehensive program of training for a young man who might not have much future; he might be in there 1 day. I only mention that because he said, just as you did, a young man coming into the mines, and this led to some intelligence that I hadn't had, that these days women are now employed in the mine——

Mr. BARRETT. True. About 460 at last count.

The CHAIRMAN. There used to be this mystique, that somehow it was bad fortune to have women in the mine. That has been broken and now it is equal opportunity employment situation.

Mr. BARRETT. Yes; and some of them are performing very well.

The CHAIRMAN. You say that with patronizing fervor.

Mr. BARRETT. We do have some studies and we can verify the fact that time on the job is very important. It is not uncommon any more for a fatal accident report to cross my desk where a man has worked in a mine less than 1 week. Those things are really disheartening to me. I don't think we should allow it or can allow it.

The CHAIRMAN. If there is error here, certainly it would be wisdom, indeed, to make the error on the side of knowledge and training. That is the way it impresses me.

Mr. BARRETT. Absolutely.

The CHAIRMAN. Well, if this were the end of our opportunity to talk about what we need in this legislation, I wouldn't stop now, but I know it is not. I know the Labor Department people are here and we do have a time problem, so I will say this is only our formal ending of our opportunity to talk with you, Mr. Secretary, and the people in your Department. We do appreciate more than I can fully say how you have helped us and we look forward to this help continuing.

Secretary ANDRUS. Mr. Chairman, again our appreciation to you and your staff. The people in the Department have worked on this matter for a much longer time than I have been here, but our concern is for the safety of that miner more than anything else and we will continue along that line.

The CHAIRMAN. I can appreciate your position in the transfer. I know the people that are with you in this area and I am fully familiar with their excellence and dedication to this very important effort for our country. To see them go over there, well I could see you would feel a personal loss, too. The personnel have an excellent dedication that I applaud.

Do you want to deny anything I said about it?

Mr. BARRETT. I was just going to say I have had more cooperation and response from the new Secretary than I ever expected. He has been very supportive of our programs in the short time he has been here.

The CHAIRMAN. I get that full sense and when I read the statement last night I was exhilarated.

Mr. Secretary, thank you very much.

Secretary ANDRUS. Thank you.

The CHAIRMAN. Now we will gather together the people from the Department of Labor.

It seems like only yesterday we sat and talked like this before—not quite like this, but we sat and talked before.

We have from the Department of Labor Mr. Arnold Packer, Assistant Secretary for Policy, Evaluation and Research; Carin Clauss, Solicitor of Labor and Mr. Lagather, Deputy Solicitor of Labor.

Mr. Packer, we welcome you again and look forward to your statement.

STATEMENT OF ARNOLD PACKER, ASSISTANT SECRETARY FOR POLICY, EVALUATION AND RESEARCH, DEPARTMENT OF LABOR, ACCOMPANIED BY CARIN ANN CLAUSS, SOLICITOR OF LABOR; AND ROBERT B. LAGATHER, DEPUTY SOLICITOR OF LABOR

Mr. PACKER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee:

I would like to express my appreciation to the subcommittee for this opportunity to express the administration's support for S. 717. This vital legislation will significantly upgrade the safety and health protection afforded to the Nation's miners.

Accompanying me today are the Solicitor of Labor, Carin Ann Clauss, and the Deputy Solicitor of Labor, Robert B. Lagather.

I would also like to take this opportunity to recognize the important contributions to this bill that have been made by Secretary Andrus, his staff, and the staff of MESA.

As you know, they have been working closely with you for some time and they have worked diligently with us in an effort to help develop the best possible legislation.

We are looking forward to working with the experienced and dedicated MESA staff as this important worker protection legislation is implemented.

The safety and health of the American miner is a matter of prime concern to us all. The toll of human suffering that arises out of work-related illness, injury and death in mining is justification enough for concern. Moreover, every disabled miner, and every dependent survivor of miners killed on the job represents economic costs and losses, in one form or another, to our society and to the employer.

S. 717 represents a landmark in addressing the problems of safety and health in the Nation's mines. The bill is a tribute to the leadership provided by this subcommittee in shaping and developing this legislation.

For the first time we will have one comprehensive safety and health law covering all mines. Stronger enforcement mechanisms are established. These strengthened enforcement measures are particularly needed in those mines presently covered by the Metal and Nonmetallic Mine Safety Act. Responsibility for administering the mine safety and health program will be transferred from the Secretary of the Interior to the Secretary of Labor.

In my remarks today on S. 717, I will be discussing two general subject areas: the transfer of responsibilities to the Department of Labor and the substantive improvements made by the bill.

With regard to transfer, mine safety and health functions are transferred to the Secretary of Labor in a new Mine Safety and Health

Administration headed by an Assistant Secretary subject to Senate confirmation.

It is highly appropriate for a safety and health program covering nearly 400,000 miners to be located within a department which already has a congressional mandate to improve the working conditions of the American workers. I believe the Department of Labor is the appropriate place within the executive branch to assign responsibility for the protection of basic worker rights, including the right to a safe and healthful workplace.

There are, of course, many details to be worked out in the course of the legislative process.

For example, there is the matter of organizational structure to be considered. The Secretary of Labor's responsibilities would be carried out through a newly created Assistant Secretary of Labor. We support this approach. This will help assure that appropriate emphasis is given to the special health and safety needs of the Nation's miners.

On the subject of implementing transfer and the subject of how the program is to be administered, I am also cognizant of certain provisions, both those retained from the present coal act and those added by the bill's amendments, which reflect a deeply felt concern on the part of the drafters of the bill regarding any possible reduction in efforts and resources devoted to mine safety and health.

The bill requires that every mine is to be inspected at least four times yearly. We feel that four inspections per year in underground mines is a justified minimum and is consistent with the provisions of the present Coal Act. However, more flexibility is needed in dealing with the wide variety of different situations which can occur in surface mining. While I recognize that some surface mines may require four inspections, or more, per year, others would not. Therefore we believe that there should be flexibility to schedule inspections as appropriate, rather than be tied to a fixed statutory level for surface mines, and those remarks apply to surface mines only, as to the flexibility.

An issue related to transfer is the bill's provision for a new and separate review commission to deal only with mine safety and health cases. Obviously there is a need for independent review of contested cases. However, procedural fairness can be assured by establishing within the Department itself a functionally separate reviewing panel. The adjudication of contested cases within an administering Department is a common and accepted practice, which as the advantage of avoiding a proliferation of new agencies. That would mean there would be a separate review committee for the MESA function itself.

In any event, we do not believe that the creation of an entirely new Federal agency is necessary or desirable. If a separate review body is decided upon, we would favor the expansion of the present Occupational Safety and Health Review Commission by adding additional members with expertise in mine safety and health. Those additional members would be identified and exclusively serve with regard to MESA cases.

We would be willing to accept this review function being performed either in the Department or in an expanded Occupational Safety and Health Review Commission.

While the provisions accomplishing transfer and providing for the continuing level of enforcement activities are important features of S. 717, the bill contains numerous other significant provisions which we support.

Among these, S. 717 will establish a systematic and comprehensive standards-setting procedure. The Metal Act's so-called "advisory" standards will disappear, to be replaced by standards which have the full force and effect of law. The bill will also wisely provide a much needed "general duty" clause to assure that recognized safety and health hazards cannot be ignored with impunity in those instances where a specific standard does not apply. A wide range of sanctions and remedies are established, giving flexibility to enforcement activities so that the response to violations can be tailored to specific situations.

Under S. 717 the provisions for assessment and collection of civil penalties are streamlined, so that the backlog of collection cases involving unpaid civil penalties, which has occurred under present law, will not be repeated in the future. In addition, a wide range of injunctive relief is specifically provided.

A key innovation is the bill's provision for mandatory safety training for miners. A miner who is untrained in basic protective, emergency and safety procedures is not only in personal danger, but will also endanger other miners.

With regard to some of the provisions of S. 717, we would have a few suggestions for further consideration in strengthening the protections it will offer to miners. Under the bill, participation of miners in the inspection process is a key element in assuring both a complete inspection and the active involvement of the miners themselves in achieving a healthier and safer workplace. We suggest that provision be made for additional involvement of miners' representatives in the overall inspection activities. For example, provision for employee representation at opening and closing conferences held by inspectors with the mine operators might be made.

In the area of closure orders for imminent danger, we suggest consideration of revisions to the present bill to asure that the closure order will be lifted only after the inspector finds that the conditions or practices which gave rise to the imminent danger have been corrected. Presently the bill requires only a finding that the "imminent danger" no longer exists. We believe that not only the imminent danger, but the basic source of that danger, should be removed before miners return to work.

We also note that the bill restricts the granting of interim relief from compliance with orders for abatement of violation during the pendency of contested cases. We endorse such restrictions as necessary to protect miners from the continuation of unsafe conditions during a potentially protracted litigation process. We suggest that these provisions be carefully reviewed to assure that orders for abatement of violations can be stayed only in the most exceptional circumstances.

With regard to the training requirements for miners, which I have previously mentioned, we would suggest that the scope of such training be explicitly expanded to include training in health matters and also in the statutory rights of the miners themselves.

We also note that the bill contains strong provisions protecting miners from discrimination based on the exercise of their rights. Such

provisions are vital in assuring that the active involvement of miners in safety and health matters will not be chilled by fear of reprisals based on the exercise of their rights. We favor these provisions and suggest that they should be expanded in some respects. For example, a miner, under the bill, has 30 days to notify the Secretary of a claim of discriminatory action. We suggest expanding this period because 30 days is a relatively short period and sometimes a delay in filing a complaint is unavoidable.

In addition, the bill provides, in effect, a 6-month statute of limitations on citing for a violation. In some circumstances in the mining industry it may prove impossible to issue a citation within such a period. For example, in a situation where the mine has been sealed after an accident and access is not possible for several months, it would be impossible to conduct the investigation to determine what violations caused the accident. Therefore we suggest that serious consideration be given to providing more flexibility in this area.

The bill shows the result of detailed analysis, considered evaluation, and careful drafting. But, as with any piece of major legislation, there are some provisions which still need to be carefully assessed and reviewed.

In this statement I have dealt with the major issues. On virtually all of these points I believe we are in general agreement. As this historic legislation moves forward, I hope that we can continue to work closely with you, and to offer you our suggestions and technical assistance.

The CHAIRMAN. Thank you very much, Mr. Packer.

I understand that neither you, Mr. Lagather, nor Miss Clauss have a statement?

Ms. CLAUSS. No, sir.

The CHAIRMAN. We have some written questions here and I think we have time to go through these or some of them, until the bells ring, and then I have to recess briefly.

Mr. Packer, the bill places additional stress on the development of health standards and on improving health enforcement in the mining industry. Secretary of the Interior Andrus has told us that the administration strongly supports this increased emphasis on health. NIOSH has already told this committee that it has identified a number of health hazards associated with mining, so upon enactment we can expect a considerable amount of activity by NIOSH in developing proposed health standards.

Now, is the Department of Labor prepared to act swiftly to turn to these proposals which will be coming your way into health standards for the Nation's miners?

Mr. PACKER. Yes; we certainly are cognizant of the special health problems that exist in the mines, in addition to the safety difficulties, and it is our intention to move as quickly as possible in those areas.

The CHAIRMAN. There is some apprehension here that NIOSH has not all of the resources necessary to do their full job. Do you have any feelings about this, whether there are additional resources needed in this area?

Mr. PACKER. I have no personal knowledge of that. We will have to assess it. It is a concern, really, that health procedures really cannot go forward unless standards are available and we will have to assess that situation.

The CHAIRMAN. This bill before you does not have any impact on the budget process here in the Congress, does it?

Mr. PACKER. I am not clear on that, Mr. Chairman. As I understand it, the bill does mandate more inspections than have gone on before. It is not clear to me as to whether those additional inspections can in fact be accomplished without additional resources.

The CHAIRMAN. I just wanted to get some of your background and knowledge and experience here that might bear on this. I just am wondering whether we will find out here in 6 months that something is needed over there that we don't have and we will have to come in here on an emergency. I just wondered, where do we stand with the budget process here in the Senate.

I know this is talking to you on another part of your background.

Mr. PACKER. We would have to work with you. It might very well be that that does come under the budget act and it has to be reported——

The CHAIRMAN. That is the one that has me worried. You are familiar with that?

Mr. PACKER. Yes. I don't think there is such—well, I could talk about a waiver, but I am sure that is a procedure you would want to avoid.

The CHAIRMAN. We could draw attention to clear and present danger that would be inordinate, unless we get a waiver?

Mr. PACKER. Why don't I later today check with my old colleagues there and see just what the situation is and let you know?

The CHAIRMAN. Excellent. My apprehension is reduced. Thank you very much.

The administration has proposed some extensions in the time schedule for promulgating standards. Do you think that with these changes the Department will be able to promulgate these health standards reasonably promptly? Are you familiar with the other testimony that came in this morning?

Mr. PACKER. Yes; I read the Secretary's statement. My own feeling is that people should make deadlines and we should be sure that they are not extended unnecessarily. I don't think we believe that the extension really will be necessary.

The CHAIRMAN. The advisory committee process has evidently been a slowdown, and Secretary Andrus in his observations suggested that we not include advisory committees in the standard-making process.

Mr. PACKER. We agree with that.

The CHAIRMAN. This seems to be an attitude of the administration, not only with respect to this particular and specific area of law and regulation, but it is a general attitude, as I see it; a general attitude which is also being applied to this specific area. I wouldn't expect you to know the details of how advisory committees have increased the time periods for standards or, indeed, weakened some of the reaches of the standards.

Mr. PACKER. I think you are correct, Mr. Chairman. I think there is an attempt to streamline the processes, to get on with the action, to stop dealing with paper and start dealing with conditions in the field and move in directions that will permit us to do that.

The CHAIRMAN. Maybe we can come to Miss Clauss as the Solicitor and what the Commission's function would be under the bill and how you would change this.

We do perceive problems, as I am sure you know, in this institution when we try to combine within one area various aspects. You know the problem—the judge, the jury, the prosecutor, the whole works, and we get some statements of concern when too many elements are included in one place. You would include all these functions within the Labor Department, without that independent commission approach, so I just wonder as the Solicitor here, whether there are problems that you see.

Ms. CLAUSS. Senator Williams, we would be very happy to work with your people to draft some language setting up a review board that we feel would have the kind of independence you are concerned with. We do have review boards at the Department and starting with that concept and working from there to create some greater protections here, and we feel that we could provide the necessary independence.

The CHAIRMAN. Is there any model in any other area that you were thinking of in making your suggestion?

Ms. CLAUSS. I think we would start with the Benefit Review Board, but we could propose additional provisions that would create even greater independence.

The CHAIRMAN. Did you have anything further, Miss Clauss?

Ms. CLAUSS. I just wanted to say, Senator, and I see that our attorneys are already drafting some language here, that we feel that it would be quite proper and would be permissible to create a review board where the members are appointed by the President and they could be appointed for a term of years and there could be conditions set on their background and the kind of person that would serve on the review board, and we would be happy this afternoon to get together with staff and go over some proposals on this.

The CHAIRMAN. I think, quite frankly, that this is an area that will require some considerable thought, so we will look forward to this further discussion.

What is your attitude about the coverage under this bill of surface uranium milling facilities? This is an area associated with mining that has not been covered. Has this been discussed?

If it hasn't, why it can be and then we can hear from you.

Mr. PACKER. We have not really analyzed this very thoroughly. We have no objection to the way it is handled in the bill, but that judgment has not been arrived at after a thorough analysis.

Mr. Chairman, on the previous question, the House has put some funds tentatively aside for the transfer of MESA, the House Budget Committee. My judgment is that there is an increased enforcement, so I guess there would also have to be a May 15 resolution. As you know, the House Budget Committee does have a line item arrangement in which they identify every item in the budget, no matter how small.

I believe that if you communicated on the floor, or even privately with Senator Muskie, but perhaps on the floor in debate—you understand that the Senate Budget Committee does not have item detail in their budget resolution—that the money that is available in the appropriate functions is adequate to include this additional enforcement that you would be covered. I don't think that there would be much of a problem on that.

The CHAIRMAN. I missed that point. You are covered by what?

Mr. PACKER. I think if you would on the Floor perhaps, when the budget resolution is being debated, which I guess is very soon, if you

would just bring up the matter that there is some additional moneys in the appropriate function—I really don't know what function this will fall in, which one of the budget functions—but that the money that is in there is adequate to cover the additional inspectors in this bill, I am fairly confident that the Budget Committee would answer affirmatively and you would then have no difficulty later on They round to the nearest tenth of a billion dollars, so I don't think they would have trouble responding—

The CHAIRMAN. I would think it would be wiser to say we would hope it would be adequate. You can't be sure. Wouldn't that be the foundation for coming back later, if it should be necessary.

Mr. PACKER. That is right. As you know, the budget limit is on the total, not on the functional arrangement anyway.

The CHAIRMAN. That is right, and maybe we are, as a matter of fact, in a position or maybe we have provided enough to cover any increase that might be needed down the line.

Mr. PACKER. Are you expecting not to be able to report prior to May 15?

The CHAIRMAN. Do we expect what?

Mr. PACKER. Do you expect that you will not be able to report this bill prior to May 15? In that case you would need a waiver, if it was going to come after May 15 and the additional inspectors were going to have to be brought on board in fiscal year coming up, in 1977.

The CHAIRMAN. Who knows? Who would have expected it would have taken us nearly a month to define fair and official and appropriate conduct, but it has. You never know on these. It was simply a matter of reorganizing the Senate jurisdictional committees and it took a month and a half, so we just don't know. That is our objective, yes, but we can't be sure.

I think we will let everybody know that this was a concern of ours, that we didn't want to spring anything on them in the budget process here that is unexpected.

I think that will probably handle our needs from the Department of Labor at this time, and we fully expect that we will want to accept your offer to stay in communication as we move ahead. Thank you very much.

All right, now we are going to have to take a short recess.

[Short recess.]

The CHAIRMAN. I wonder if we could now come to order again. A vote was just called in the Senate. So if we could, we will just have the Senators from Wyoming introduce the next panel of witnesses from the trona mining companies in Wyoming.

Gentlemen will you take your places at the table and Senator Hansen and Senator Wallop, we will be pleased to hear from you.

Senator Hansen, it is particularly good to have you here at the Committee on Human Resources, the Subcommittee on Labor. Senator Wallop, too.

Senator HANSEN. Thank you very much, Mr. Chairman.

First let me express the appreciation of the Wyoming delegation for this opportunity to introduce to you and the committee some good citizens of Wyoming. Beginning on our left, down at the far end of the table, I first introduce Rod Kvidahl, with FMC. Next to Mr. Kvidahl is Dave Delling, with Stauffer Chemical; Bill Garland, with Allied Chemical, and Paul Benthurum of Texas Gulf.

These four companies all are very important to the trona industry, all very important to Wyoming, have made for substantial job opportunities in the State of Wyoming. They are developing a natural resource, and, we add, in a very acceptable fashion. They have invested literally millions of dollars in upgrading their facilities and installing some of the latest technological improvements that have come about in order that we can maintain a very high quality environment of which we are justifiably proud in southwestern Wyoming.

All of this has been accomplished and not under threat of coercion, I think I can fairly say, but because they, too, appreciate the kind of life we have in Wyoming and they have been good cooperators in working with Wyoming people and with industry and with the Environmental Protection Agency in bringing about and putting into place those changes, some of which have just come about recently, that make possible the protection of the fine quality of air we have in Wyoming and taking other steps, as well, that are very important.

I am awfully pleased that my colleague, Senator Wallop, who was out in that part of the State just about a week ago, weren't you?

Senator WALLOP. I was.

Senator HANSEN. I will be going out late this afternoon. I know that Senator Wallop would like to say a word.

The CHAIRMAN. Senator Wallop.

Senator WALLOP. Thank you, Mr. Chairman.

It is also my pleasure to be here to introduce these gentlemen from Wyoming and they have made a long trip here from Rock Springs and Green River. I think they have significant argument to present to this committee.

The trona industry is a significant part of the economy of Wyoming. They employ a little more than 3,500 people in the State, with a payroll of $35 million. They have an annual production of trona soda ash of 7,100,000 tons. They pay in excess of $1,340,000 in severance taxes to the State, property taxes of $6,100,000. While those figures may not sound staggering to somebody from the east to a State wtih a population of 360,000 people, it is a significant contribution.

They are good neighbors, good employers, and they have a good safety record in the State and they have been great corporate citizens in Wyoming.

Southwestern Wyoming, before the advent of trona, was dying and these gentlemen and their industry has essentially brought it back to life. Their record of safety in Wyoming is unparalleled in major industry, and I hope that the committee sees fit to listen to the arguments that they present as you take up the problems concerning MESA and the application of the rules that are promulgated under it.

The CHAIRMAN. Thank you. We appreciate your statements, Senator Hansen and Senator Wallop. I am familiar with the industry and we have met these gentlemen on another occasion, and it is helpful to have them return because the last time we had this legislation we didn't, obviously, move it to final enactment or consider final exploration, so it would be very helpful and very vital to our record and our consideration of this bill to have the testimony that we are about to receive.

I think, Senators and gentlemen, that it might be wise to recess our committee long enough to go to this vote, which is, I think, the Baker amendment. So it is a very important vote that is before us, and I will return right after that.

[Short recess taken.]

The CHAIRMAN. All right, we will reconvene.

Gentlemen, we have had this pause and, hopefully, we won't have another one for a while.

Who will be the first spokesman?

STATEMENT OF ROD KVIDAHL, FMC CORP., TRONA MINE & PROCESSING PLANT, GREEN RIVER, WYO., ACCOMPANIED BY DAVID DELLING, RESIDENT MANAGER, STAUFFER CHEMICAL CO., GREEN RIVER, WYO.; WILLIAM GARLAND, MANAGER, ALLIED CHEMICAL CORP., GREEN RIVER, WYO.; AND PAUL BETHURUM, MANAGER, SODA ASH OPERATION, TEXAS GULF, GREEN RIVER, WYO.

Mr. KVIDAHL. I will be the first one. My name is Rod Kvidahl and I am the resident manager for the FMC Corp. Trona Mine & Processing Plants located near Green River, Wyo. I greatly appreciate this opportunity to appear before you today to testify on this bill, S. 717.

A year ago, Mr. Chairman, I was privileged to appear before you to comment on a predecessor bill, S. 1302. The bill before you, S. 717, is very similar to S. 1302 and although most of my comments on S. 1302 also apply to S. 717, I shall not repeat my previous testimony in the interest of time. I am sure you are aware of the good safety record which we have established in our Trona mines and of the comprehensive training programs in use by our companies.

I would like to compliment your committee on the inclusion of training in this bill as I feel that our efforts in this area are in large measure responsible for our excellent safety performance. There are, however, a few features of the current bill, S. 717, which differ from its predecessor upon which I would like to comment. In addition, we four Trona representatives have collectively prepared a position paper on specific features of the bill which we would like to introduce for your consideration.

One of the more disturbing features of this bill, S. 717, is the deletion of the provision in the predecessor bill which provided that hearings on new standards be a matter of record and subject to section 554 of title 5, United States Code. Substitution of the informal hearings as outlined in the present bill does not give the opponent of the proposed standard the right to cross examine the agency's witnesses as to intent or purpose, nor does the informal hearing allow for an impartial judge to rule on the validity of the standard prior to its promulgation once all of the testimony and witnesses have been heard. In effect, the agency proposes the standard, hears the opposition's story, and then rules on the validity of its own proposed standards.

At this point I would like to digress for a moment to say that we certainly agree with the committee and previous witnesses on the concept that a timetable be established for the promulgation of standards and the avoidance of unnecessary delay in new standard making.

To my knowledge, the right to a formal hearing in rulemaking has been exercised only three times under the present Metal and Nonmetal Act. Requests for an additional fourth hearing are presently in prog-

ress. Surely this caseload cannot be interpreted as an undue burden which seriously impedes promulgation of needed standards. No operator will accept the added cost of a formal hearing unless there is a serious question as to the validity and soundness of the proposed standard and he can produce evidence to substantiate his position. Mr. Chairman, I urge your committee to give this matter careful consideration and to reinstate the provisions for guaranteeing the right to formal hearings, and I can cite an example later, if you wish, of where this was very helpful in promoting good safety in our mine.

The CHAIRMAN. If we don't have time to get to that specifically, you could supplement that in a communication to us. I would appreciate it. We appreciate your observations on this particular area of streamlining and it will be very thoughtfully considered, your observations will be.

[The following material was subsequently received for the record:]

FMC Corporation

Government Relations Office
1625 I Street NW Suite 520
Washington DC 20006
(202) 293 7900

April 4, 1977

Honorable Harrison A. Williams, Jr.
Chairman
Committee on Human Resources
U.S. Senate
Washington, D. C. 20010

Dear Senator Williams:

I am writing in response to your request that I provide a specific example of the importance of the formal hearing procedure in the process of promulgating health and safety standards under your proposed new mine safety law. As you may recall, I stated in my hearing testimony before your Subcommittee on Labor on April 1 that the formal hearing procedure had been helpful in preventing the establishment of standards that would have actually produced hazards to the miners in our Wyoming trona mines.

The example which I had in mind in making this statement concerned the use of explosives in both underground and surface mining operations. The problem arose when the Interior Department decided to convert an advisory standard on the subject of explosives into a mandatory standard. In the conversion process the agency not only increased the scope of the coverage of the advisory standard, but also injected some elements which without question would have caused hazards to miners in our underground mining operations. (These elements would not have caused hazards in surface mining operations, which may be the factor which caused the agency to become confused and to believe that the standard could be safely applied underground.)

In formal hearings held on the proposed explosive standard, held at Salt Lake City, Utah, and Denver, Colorado, in late June and early July of 1976, the cross examination of the agency's witness established that the agency had not considered the application of the standard to underground operations such as the trona mining operations. As a result of the record made during this cross examination, the Interior Department agreed that the changes in wording suggested by ourselves and other underground mine operators should be incorporated into the standard in order to eliminate the hazardous elements contained in the standard as initially proposed. This agreed change in wording was concurred in by the attorneys for the involved unions who participated in the formal hearing.

In order that you may have a record of the particulars on this example of the importance of formal hearings in the standards making process, I am enclosing a memorandum which sets out the exact wording of the prior advisory standard, the proposed standard that contained hazardous elements, and the final standard that eliminated the hazard as a result of the formal hearing. The hazardous elements in the proposed mandatory standard are set out in paragraphs (a) and (b) of Section II of the memorandum; the explanation of the hazards are in Section III of the memorandum; and the corrective wording which made the standard safe are in Section IV of the memo.

I am of course aware that opportunity for public written comments and an informal hearing are intended to resolve the kind of problem that we experienced with the ill-advised explosive standard. I am, however, strongly of the view that had we not had the formal hearing procedure as a means of testing the standard in depth, the hazardous aspects of the explosive standard would not have been corrected by the institution of a standard that was actually better than the one originally conceived by the agency. At best, the use of public comments and informal hearings offers a remote prospect of dealing with this kind of problem.

May I close by again expressing my appreciation to you for your consideration in allowing me and my colleagues the opportunity to present our views to your Subcommittee on April 1, 1977.

Sincerely yours,

Reinert Kvidahl

Reinert Kvidahl
Resident Manager
FMC/Green River

gwd
Enclosure

Memorandum Re: Explosive Standards which as proposed contained hazardous elements

In 1976 the Department of Interior undertook to convert an advisory standard on explosives into a mandatory safety standard applicable to underground and surface mining operations. In the conversion process the agency injected elements into the proposed standard which would have caused hazards in underground mines. These hazards were corrected and eliminated as the result of a formal hearing on the standard and cross examination which established that the agency had not considered the application of the standard to underground mines. The particulars of the problem and its ultimate resolution as a result of formal hearings are indicated hereinafter as follows: Section I sets out the Advisory Standard; Section II reflects the proposed mandatory standard; Section III describes the hazardous elements in the proposed standard; and Section IV sets out the corrected wording of the standard which resulted from the formal hearing.

I Advisory Standard 55/56/57.6-121

Completely wired rounds should be tested with a blasting galvanometer before connections are made to the blasting line.

II Agency's Proposed Mandatory Standard

When blasting electrically, a blasting galvanometer, or other instruments that are specifically designed for testing blasting circuits, shall be used to test:

(a) Electric blasting caps for continuity prior to the addition of stemming to the borehole.

(b) Electric blasting cap series for resistance.

(c) Blasting lines for circuit continuity.

(d) Blasting circuits for resistance and continuity prior to connection to the power source.

III Explanation of Hazardous Elements

The standard in question would be applicable to metal-nonmetal sand and gravel operations, surface mines and underground mines. In the case of underground gassy mines where stemming is required by law, serious hazards would be legislated by the proposed standard for two basic reasons.

(a) The requirement to deshunt each blasting cap and check for continuity increases the likelihood of a premature blast by several fold, since the caps are very sensitive to stray current discharge when the shunt is removed.

(b) The blaster is working in an area of the mine where recognized risks are high and increased time means increased exposure to these risks.

Recognizing this problem, the standard was modified to permit the complete wiring of a blasting cap series, followed by a check for continuity and resistance prior to the addition of stemming.

IV Corrective Wording Developed at Formal Hearing reads as follows:

(a) Each electric blasting cap for continuity if stemming is to be used. Tests shall be made after the electric blasting cap has been placed in the borehole and before the addition of stemming, but not if the electric blasting cap series continuity and resistance test is conducted prior to the addition of stemming.

(b) Each electric blasting cap series for its resistance and continuity.

NOTE: No other changes were required.

Mr. KVIDAHL. Mr. Chairman, as I testified last year, I feel very strongly that this bill places undue emphasis on the use of penalties and closure power. These sanctions in the long run may well divert attention from the major cause of mine accidents, that is the unsafe acts, and may hamper the efforts of conscientious operators who by their records have shown their concern for the welfare of their miners.

Again, Mr. Chairman, I thank you for your attention and the opportunity to be heard. Thank you.

The CHAIRMAN. Thank you very much, Mr. Kvidahl.

Do all of you gentlemen have a statement? As you heard, the buzzer has announced a final vote on the measure, before us, so I will have to leave and then I will return again. We are still under a rather strict limitation here within our own procedure, but let us procede for the time.

Mr. DELLING. Mr. Chairman, my name is David Delling and I am resident manager for Stauffer Chemical Co. of Wyoming's trona mining and processing facility at Green River, Wyo.

Stauffer shares her colleagues' appreciation for the subcommittee's interest in the views of the Wyoming trona industry on the proposed mine safety legislation, S. 717. Mr. Glen Zumwalt, from Stauffer's Wyoming operation, testified last year before this subcommittee on a similar bill, S. 1302. I will not take the time to review Glen's testimony since it is a matter of record, except to point out that it is applicable in all particulars to the bill presently before the subcommittee.

Specific comments on S. 717 have been submitted to the subcommittee as combined written testimony from the trona industry. One feature in particular is of concern to Stauffer, namely, the provision in section 102 for utilizing the informal hearings procedure for considering proposed standards. Informal hearings offer no guarantee that a controversial issue will receive a complete and impartial evaluation with both sides having an opportunity to cross examine. I think it is imperative for a party who will be affected by a new standard to have the opportunity to question the reasoning behind establishment of the standard.

Formal hearings can be incorporated into the expeditious timetable that the bill provides. I agree with the timetable concept.

Our underground trona mine, which is classified as gassy, is worked by conventional room and pillar methods. Since startup in 1962, we have produced about 21 million tons of ore without a fatility. Our mining philosophy is so conservative that areas mined 15 years ago are still standing open as they were when first mined. This conservatism, together with our full-time safety and training programs, allow Stauffer to achieve disabling accident frequency rates of less than one injury per million man-hours worked in both 1975 and 1976. A similar rate is attainable again in 1977. Last year we had one disabling injury on the job that resulted in 4 days of lost work. Off the job last year our 500–plus employees suffered 33 disabling injuries, with an average lost time of 18 days each. Last year Stauffer of Wyoming employees were safer at work than they were at home.

How is it possible to achieve such a record? Certainly working conditions must be as ideal as possible and all equipment must be the best and kept in good order. Beyond these readily recognized requirements,

however, lies another of equal or greater importance: human work performance. To get people to work safely they must be well trained and they must truly believe in safety. Further, they must feel that their employer's commitment is genuine. Last year we spent about $528,000—over $1,000 per employee—on training and safety equipment alone. This year we are spending nearly twice that amount. Safety is the foremost consideration of all work activities at Stauffer and this approach works. I am glad to see that S. 717 recognizes training as an integral part of safety, but I must point out that our excellent safety performance has been achieved without fines, penalties, closure orders, or constant inspection by governmental agencies. For a safe operation such as Stauffer's, such extreme measures may be counterproductive.

Gentlemen, I have the fulltime responsibility for the safety of a large group of people and I share your deep concern for their welfare. I think that we have successfully brought together the objectives of running an efficient and productive mine safely. Stauffer is most eager to do anything further that will advance safety in our mine; we have always been committeed to that objective, and I am hopeful that whatever legislation emerges from your committee helps us reach that goal without creating a regulatory nightmare that distracts everyone from the task at hand. Thank you.

The CHAIRMAN. Thank you very much.

I have the staff reviewing your testimony from the industry last year. It might be we can find some areas that would be helpful to a better understanding of our members by including part of last year's testimony. Would that be agreeable if we do that?

Mr. KYIDAHL. Certainly.

The CHAIRMAN. Mr. Garland, it will probably be that I will interrupt you in the middle of your testimony to vote and then return.

Mr. GARLAND. That's all right, Mr. Chairman.

Mr. Chairman, my name is Bill Garland, manager for Allied Chemical Corp., Green River, Wyo., trona mine and processing plant. We want to thank you for the opportunity to present views on S. 717—a bill to promote safety and health in the mining industry.

At the Green River works, we have been in operation since 1968 and employ over 1,200 people, of which approximately one-half work underground mining the mineral, trona, and the remainder work on the surface processing this mineral into a basic chemical soda ash.

At our location, we also mine a relatively flat bed of trona approximately 10 feet thick, about 1,500 feet below the surface using conventional, continuous and longwall type mining equipment. The mine has expanded steadily to the current mine production level of 4 million tons of trona per year. During this time we have enjoyed a safety record that compares favorably with all industry.

The proposed legislation concerns us because it implies a uniformity to all mining operations by assuming that the safety and health of employees in the mining industry can be advanced by application of common standards, rules and regulations.

All mines are not the same. Potential hazards and work conditions vary considerably. For that reason, an effective safety and health program should have standards, rules, and regulations suited to that particular mine environment. The application of rigid, uniform

standards to all mines will only succeed in increasing our costs and decreasing productivity.

Significant improvement in safety can be obtained only by thorough training and constant emphasis from top management down that safe work habits and conditions are an absolute must on a daily, ongoing basis in any job task. This is an absolute must on a daily basis.

Also, the cost penalties, not only punitive fines, but more importantly, decreasing productivity jeopardizes the viability of our trona industry.

The CHAIRMAN. Would you pause there, Mr. Garland?

[Short recess taken.]

The CHAIRMAN. Now we will be uninterrupted.

Mr. GARLAND. Trona, having no present market value, must be converted to soda ash or bicarbonate of soda before it has value. Competition for the soda bearing chemicals is keen among the trona producers, synthetic soda ash manufacturers, substitute products, and other mineral industries.

For this reason price increases are not feasible to cover the increased cost of doing business.

The bill includes highly punitive enforcement measures against operations for noncompliance with standards with the implication that this will provide sufficient motivation for improving safety and health in the mining industry. Throughout the bill the procedures are heavily weighted to favor the agency in any disagreement over compliance.

The existing Metal and Nonmetal Act requires the Secretary to consult with an advisory committee and provide formal rulemaking procedures. This bill, S. 717, provides informal procedures for the promulgation of standards, with optional consultation with an advisory committee. The elimination of the formal hearing requirements under the Metal and Nonmetal Act could unnecessarily delay the promulgation of standards through increased number of requests for variance or extended litigation. The informal hearing will allow only the presentation of opposition testimony with little opportunity for discussion or cross examination of the agency. The agency should have the burden of justifying its standards, and efforts should be made to resolve any conflicts promptly.

The informal hearings held under section 102(a) of this act and/or section 553 of title 5, United States Code, without reference to sections 556 and 557, generally present only the opposition testimony with no opportunity to examine agency intentions. Formal and impartial hearings conducted by an administrative law judge can and will get the facts on the table quickly. There is no reason to relieve the agency of the burden of justifying its standards. To promulgate standards without a proper review would be disastrous.

Certainly the establishment of proper standards, rules and regulations are important, and compliance is needed by all persons involved. However, we believe a continued review of existing standards for our industry, with strengthening, where needed, would more properly address itself to our problems than complete revision of administrative procedures as proposed in the bill.

I thank you for this opportunity to share our position with you and urge your careful consideration of these factors.

The CHAIRMAN. Thank you very much, Mr. Garland.

Now we turn to Mr. Paul Bethurum, from Texasgulf.

Mr. BETHURUM. Mr. Chairman, my name is Paul Bethurum, and I am manager of Texas-gulf's soda ash operation. I wish to thank you and other members of the committee for the opportunity to present our views on Senate bill 717.

Our operation is a very recent addition to the soda ash industry in the Green River basin of Wyoming. The processing plant, designed to produce 1 million tons of soda ash per year, began commercial production a little more than 6 months ago.

Our mine, however, began experimenting with mining techniques and mining equipment back in 1969. As a result of this early work, we elected to mine exclusively with mechanical miners and have, since 1972, completed major mine development and construction programs capable of producing the ore requirements of the processing facilities.

During the Senate hearing on S. 1302 held in March 1976, our construction programs were at a crucial stage and we were extremely busy dealing with the usual complex problems associated with a major construction project. Although we were unable to be present during the hearing in the previous Congress we participated in the preparation of and endorsed a statement submitted to the committee by the trona representatives testifying on behalf of their companies. The statement contained comment and objection to specific provisions of S. 1302. Many of these same provisions appear in S. 717. However, we are pleased to see that a provision encouraging employee training has been added. We believe serious and dedicated efforts to educate and train our employees in safe work practices and to report unsafe conditions have been successful in our operations.

We are vitally interested in the prevention of accidents and the elimination of health hazards in our operations. We consider programs dealing with safety and health an integral part of the supervisory responsibility and we deal with these programs on the management level daily. To assist our safety effort, daily walkaround inspections made by our mine safety inspector and surface safety inspector are directed to observing unsafe work practices and violation of safety standards.

Realistic and meaningful standards and compliance with those standards are essential in advancing safety and health programs in any industry. The Metal Act has provided industry the opportunity to work in a meaningful way with the agency in the promulgation of rules and standards. We have as a result been provided with standards which are applicable to the trona industry.

Section 102 of this bill authorizes the Secretary in the event a public hearing is called to conduct such hearing in an informal manner. The fact that a public hearing is necessary indicates that some controversial issues or conflict about the standard must be resolved before promulgation. We feel informal hearings do not offer the opportunity to examine the Agency's intension in depth and often informal hearings result in time-consuming review of irrelevant information.

We believe the rulemaking procedure would be strengthened by requiring that any hearing held under section 102 of this bill be a hearing of record subject to section 554 of title 5, U.S. Code.

Mr. Chairman, this is perhaps a very minor point, but we are not quite certain what is intended by making accident records available to interested persons. We believe clarification is required in this particular matter, as found in section 104(c)(4).

The bill, as proposed, converts the Coal Act into a single law under which all mines will be governed. The manner in which the transfer is made should be carefully managed to avoid an interim period of confusion concernig what is and what is not brought over.

Mr. Chairman, I thank you for the opportunity to be heard on this matter.

The CHAIRMAN. These are all very thoughtful and very useful statements, and I thank the trona industry and the representatives of the industry who are in goodstanding here. We thank you for your constructive contributions to our committee. We appreciate it.

As I mentioned, we will review last year's testimony in the trona area and we might be able to find areas that will be particularly helpful to our members from that previous hearing. We will be consulting the record.

Your situation, Mr. Bethurum, is interesting. You are new to the area.

Mr. BETHURUM. Yes, sir.

The CHAIRMAN. Did you acquire an area that had been operated before or is this a new area for mining that Texasgulf has?

Mr. BETHURUM. This is an entirely new development. Our mining operations began experimentally in 1969, with very few employees and we tested continuous mining equipment and in 1974 we began the construction program to develop the surface processing facility, roads, railroads, the processing facility, et cetera. That particular complex began commercial operations about 6 months ago.

The CHAIRMAN. As I recall, the area that the trona mine is in—do you call them deposits?

Mr. BETHURUM. Yes, sir.

The CHAIRMAN. The area seems to the layman to be a rather limited area. Am I right on that?

I know, gentlemen, this is in the record, but my memory isn't always capable of instant recall on everything.

Mr. KVIDAHL. Mr. Chairman, the trona deposits cover a very wide area in southwest Wyoming, but it is limited to southwestern Wyoming. It is, roughly, some 2,000 square miles of known mineral deposits, 27 beds within that area, over 4 feet in thickness.

Currently two of us are operating in one of the so-called main beds. The Stauffer Chemical Co. operates in a different bed entirely, much closer to the surface, about half the depth of our bed and Allied's bed and Mr. Benthurum's operation is in a different bed, we think some few hundred feet above ours, but they are all located within an area of approximately—what—10 miles radius.

The CHAIRMAN. The mileage that I recall was a 20-mile radius in the area of Green River.

Mr. KVIDAHL. Yes, sir.

The CHAIRMAN. With respect to the development of standards and the processes that are mandated under the present system, if the present procedure of law is the one that should prevail, rather than the change of approach contained in this bill, would you be com-

fortable with the present procedures in developing standards in your area?

Mr. KVILAHL. I might respond first that we are not comfortable in the undue time it takes to promulgate standards and we certainly concur that this standardmaking must be expedited, but it certainly can be accomplished with formal hearings. The point that we strenuously object to is the informal hearings.

The CHAIRMAN. What is the sticking point under the present system that causes delay in developing standards? It has been suggested to us that the advisory committees are one of the reasons for undue delay.

Mr. KVIDAHL. Mr. Chairman, in our position paper I think we have outlined a number of the three formal hearings that I alluded to in my testimony and if you examine the timing on those, I think you can see that the problem seems to lie with the agency. In other words, it is not the timing from the moment the agency decides to consider new standards and the advisory committee meets and the standards are published in the Federal Register and formal hearings held. That timing is minimal, but it is from that point on, once the formal hearing has been held, until the final standard is promulgated over which we have no control that seems to be the greatest delay.

The CHAIRMAN. And that is more completely spelled out in your statement?

Mr. KVIDAHL. Yes sir, it is.

Mr. GARLAND. It is, Mr. Chairman, and one of the examples we used is still pending.

The CHAIRMAN. The processed material that comes out of the trona mine is soda ash. Is that the one product that is your marketable product, soda ash?

Mr. KVIDAHL. It is the major product, Mr. Chairman. At FMC we also produce from the trona directly a compound known as sodium sesquicarbonate, which is used in wall cleaning compounds, various cleaning compounds. Then there are some secondary products with the soda ash at our operations, but it entails manufacture of the soda ash, with the exception of this one product, sodium sesquicarbonate.

The CHAIRMAN. This is basic to glass manufacture?

Mr. KVIDAHL. Yes, sir, roughly 50 percent of the output from all of our operations go to glass manufacturing.

The CHAIRMAN. In there any other mineral that produces soda ash?

Mr. DELLING. Senator, in California there is a deposit of salt brine in Searles Lake which contains, among other things, dissolved trona, in soluble phase, and soda ash is produced there and that industry is expanding. That is the only operation I am aware of where a different natural resource is used.

Mr. GARLAND. Mr. Chairman, soda ash has been historically produced synthetically from salt brine, limestone, starting as a raw material. As Mr. Delling mentioned, this deposit in Searles Lake, Calif., is the only other naturally occurring operation, that is to be commercialized sometime this year, within the United States.

Now there is also experimental work being done on a mineral called nacolite, which is a sodium bearing mineral, but it is not presently commercially planned for processing. The basic competition to soda ash, the soda ash industry, is any alkali and its end use. Any sodium

oxide derived from chemical manufacture is in competition with our basic soda ash industry. Sodium hydroxide being most notable, which is a by-product of chlorine manufacture, so as the chlorine market either increases or decreases the availability of the base product, sodium hydroxide, is more available or less available and has a tendency to fluctuate in price in the market place, but it does offer us competition in some end uses for our soda ash.

The CHAIRMAN. And are your mines deep mines or surface?

Mr. KVIDAHL. We have all deep mines.

The CHAIRMAN. No surface at all?

Mr. KVIDAHL. No, sir.

The CHAIRMAN. What are the problems you face? Is there prevalence of gas?

Mr. KVIDAHL. I would say we perhaps have two basic problems, one being that we are all classified as gassy mines. However, it doesn't present any undue problem with us because we all ventilate very adequately. One other problem is that the trona itself, there are deep deposits, and the trona itself is the hardest substance in that strata. In other words, the roof or back of the mine, the floor of the mine are composed of oil bearing shales which are softer in composition than the rock we remove. This is a little different than you find in the coal mines, for example.

The CHAIRMAN. It is just the reverse, at least the bituminous area?

Mr. KVIDAHL. Yes, sir.

The CHAIRMAN. Then this presents problems of roof fall?

Mr. KVIDAHL. It presents problems, but we are able to cope with them. Our technology is such that we don't suffer injuries or experience disaster type situations with it. We are on top of it. But it is different.

The CHAIRMAN. Is the basic support the bolt?

Mr. KVIDAHL. Yes, sir.

The CHAIRMAN. Your appearance here and your testimony, together with materials that are being presented, together with the statements of last year, I think will put is in a good position to know how your industry can best be served by this legislation. We appreciate very much your testimony.

Are you all Wyoming based?

Mr. KVIDAHL. Yes, sir.

The CHAIRMAN. Thank you very much for your testimony.

[At the direction of the chairman, the testimony of representatives of the trona mining companies at the Labor Subcommittee's hearings on S. 1302 (94th Congress), given on March 31, 1976, is included in the record, as follows:]

[Excerpt from Mar. 31, 1976, hearing by Senate Subcommittee on Labor]

The CHAIRMAN. That was a very happy beginning for this panel. I have the greatest respect for your Senators.

Mr. Kvidahl, I gather the three of you are from separate corporate entities and work in a rather small geographical area.

STATEMENTS OF ROD KVIDAHL, RESIDENT MANAGER, FMC TRONA MINE, GREEN RIVER, WYO.; ERNST C. BAILEY, GENERAL MANAGER, ALLIED CHEMICAL CORP., GREEN RIVER, WYOMING WORKS; AND GLEN ZUMWALT, MINE OPERATIONS SUPERINTENDENT, STAUFFER CHEMICAL CORP. OF WYOMING, GREEN RIVER, WYO., A PANEL

Mr. KVIDAHL. Yes, Senator.

My two colleagues and I would each like to present a short statement, and we have submitted some comments on the bill per se, some technical comments.

We would like, if it meets with your pleasure, to present our statements, and then answer any questions that you might have.

The CHAIRMAN. Fine.

Mr. KVIDAHL. Thank you, Mr. Chairman.

I greatly appreciate this opportunity to appear before you today to testify on this bill, S. 1302.

My name is Rod Kvidahl. I am the resident manager for the FMC Corp. trona mine and processing plants located near Green River, Wy.

At this location, we employ approximately 1,200 people, roughly half of whom are engaged in the underground mining of the mineral, trona, and the balance of whom are engaged in the chemical processing of this mineral into useful sodium-based chemicals, chiefly soda ash. This basic chemical is used principally in the manufacture of glass, soap, and detergents, water treating, and pulp and paper manufacturing.

Our area is in the Green River Basin of Wyoming is the only known area in the world containing vast underground deposits of the trona mineral. Trona is chemically known as sodium sesquicarbonate, a combined salt of Na_2CO_3. $NaHCO_3$ and water.

Beginning about 28 years ago, my company successfully developed underground mining techniques and chemical processes to convert this unique mineral to the very basic chemical, soda ash. At our location, we mine an essentially flat lying bed of trona 8 to 10 feet thick about 1,500 feet underground. The trona seam, averaging about 90 percent purity, lies sandwiched between layers of low-grade oil shale.

Although enough methane is liberated from the surrounding shales to classify our mine as gassy, good control is maintained by forcing about 1 million cubic feet per minute of fresh air into the mine via three intake shafts.

By resetting our fan blades, we have the capability of increasing this flow by about 50 percent. Also, the trona is noncombustible and the trona dust is nonexplosive. In addition, based on 28 years of mine experience, it is clear that the trona dust does not constitude a pulmonary hazard to our miners.

Starting with production from my company in 1953 at a modest plant capacity of 300,000 tons per year of soda ash, our industry in Wyoming has grown to its present annual capacity of 6 million tons. At present, the companies active in natural soda ash production in Wyoming, supply over 50 percent of the U.S. demand for this important chemical. By the end of 1976, we will have expanded our capacity to about 7 million tons per year, or enough to supply some 70 to 85 percent of our Nation's demand depending upon whose figures are used.

The bill under consideration, S. 1302, is perhaps the single most important piece of safety legislation to impact our trona industry since its beginning. We feel the bill, in its present form, will not accomplish the desired safety objectives because of its punitive nature.

No one can argue with the stated objective of promoting safety and health in the mining industry. Indeed, statistics quoted by Senator Williams in introducing this bill, represent untold agony and misery.

We, who are trona mine operators, constantly strive for improved safety and working conditions for our miners. As evidence of our efforts, I would cite the disabling injury frequency record for the trona industry and my own company.

The 10-year average for the trona industry ending in 1974 shows an overall frequency based on the number of disabling injuries per million man-hours worked of 3.75 for all workers, or 6.02 for all underground miners. For FMC Corp., these numbers are 3.92 and 5.50 respectively. Comparable figures for all manufacturing are several times higher.

We do not consider these statistics, as enviable as they may be in mining circles, to be a resting place, and have pledged our best efforts to further reduce accidents and injuries in our mines.

However, it should be noted that our safety achievements have been established under the existing Metal and Non-metal Mine Safety Act.

You, Mr. Chairman, were quite correct in your introductory remarks on S. 1302 in stating that opponents to the single-manager concept for administration of all mining under one law would come forth. I am one of the opponents.

You also stated "that transferring the administrative agency from one department of Government does not represent an ultimate resolution of the mine safety problem."

It is to these two propositions; namely, that all mines are similar enough to be covered by one law and that administration of the act should be transferred from the Department of Interior to the Department of Labor that I would like to address my remarks.

The complexities of mining standards, enforcement, and mine health and safety in general cannot be resolved or even understood in the time allotted for these hearings. However, our mining and safety experts have throughly reviewed this legislation and have prepared a detailed written comment which points out the areas where we feel the bill can be improved for the benefit of mine health and safety. This comment has been submitted to you in writing.

Senator Williams has also stated "that MESA has many people who are dedicated to mine safety and that their corps of inspectors is well qualified." I agree with this statement and, because of it, I fear that the radical surgery proposed by this act could set our safety efforts back considerably.

To presume that all MESA inspectors will willingly make the change from Interior to Labor is not realistic and the very real prospect exists of a change in our area from the competent inspectors we now have two teams of inspectors whose mining background and qualifications are much weaker.

Coupled with the necessity of interpreting the complexities of the Unified Mine Safety Act, I fear a complete breakdown of our hard-won efforts to maintain safe trona mines.

In our experience at FMC, we have found that of all lost-time accidents experienced over the last 10 years, 85 percent are directly attributed to poor work habits or carelessness. A law which focuses on conditions to the exclusion of safe habits and work practices does very little to reduce or eliminate disabling injuries. Only through proper training and insistence from top management on down that safe work habits and conditions are an absolute must in any job task can real significant improvement in safety be obtained.

At FMC we have developed comprehensive training programs for entry level miners which we feel have contributed significantly to reducing injuries.

Beginning in 1971, we launched into a major expansion program which, by the end of this year, will have more than doubled the size of our mine forces. Experienced miners were simply not available to staff this expansion, and it was necessary to recruit young inexperienced personnel totally unfamiliar with underground mining. Training programs were imperative if we were to minimize accidents, reduce employee turnover, and improve productivity.

Working with an outside consulting firm, we developed first an entry-level program for new personnel which has since been expanded to include cross-training of operators on equipment new to them and mine maintenance training. We first set aside a small section of our mine as a training center. Classrooms were constructed in this center, good lighting was provided throughout the practice entries, and exact mockups of the controls for our roof bolting machines and our shuttle cars were constructed. These machines were chosen because they are the units new personnel with low seniority operate first through our job-bidding procedures.

We also employed a training supervisor to oversee our program and transferred several of our best mine supervisors to the position of training instructor. We then refurbished enough old pieces of machinery to completely equip an actual mine training section and set aside a panel for actual mining with trainees.

In brief, all new miners spend a minimum of 4 weeks in training before assignment to a working section. The first week is essentially spent in orientation, including an actual 1-day tour of the mine. All mandatory training programs, such as mine emergency and evacuation, self-rescuer, and first aid training are also accomplished within the first week.

In week 2, the new employee spends each day in the training center. Here he becomes familiar with methods of mining, mine ventilation, roof control, cable handling, et cetera. He also spends time on the bolter and shuttle car simulators and becomes proficient in the operation of the controls through the use of taped instructions and training exercises. By the end of the week, he has graduated to actual operation of a roof bolter and a shuttle car in the training center.

Weeks 3 and 4 are spent in the training panel or block where, under the watchful eye of an experienced foreman and a training instructor, he operates these machines under actual mining conditions. Experienced miners, or those undergoing cross training, operate the cutters, loaders, drills, and blasting units. By the end of the fourth week, the trainee is ready for assignment to a production crew where he becomes an extra plus miscellaneous duties. He remains there until he bids to a permanent bolter or shuttle car operator opening.

New shift mechanics receive the same training in their first week of employment as the operators. However, the shift mechanics spend a total of 8 weeks in troubleshooting and repair of defects programed into simulators in the training center.

Beginning in week 6, these trainees are given selected work orders for repair of production equipment under the guidance of the training instruction. After 8 weeks, these people are assigned to the production crews.

The average years of experience of our entire mine force is now only about 2 years. In spite of this, our mine serious injury frequency last year was only 3.47 injuries per million man-hours.

I am convinced that through training and constant emphasis on safe procedures and work habits are responsible for this performance.

I would note here that the FMC operations were visited during a recent field trip of this committee's staff, and that we certainly thank the committee chairman for including trona in this field investigation. We invite the committee members and staff to visit us again at any time. Although I was not present at the mine during the visit of your staff, I was informed that your mine investigator, Mr. Roy Wade, toured our underground operations and expressed a highly favorable opinion of our training programs.

The CHAIRMAN. I thought we set Mr. Elisburg out there, too.

Did he not go underground?

Mr. KVIDAHL. I am sorry. Yes, he went underground.

The CHAIRMAN. He has always been a little timid about that underground stuff. [Laughter.]

Mr. KVIDAHL. Every piece of recent legislation addressed to the subject of health and safety starts with the premise that an operator must be fined or penalized for unsafe conditions. This bill is no different and is punitive in nature. It does not recognize those mine operators who have conscientiously dedicated their resources and efforts toward the elimination of unsafe working conditions and unsafe work habits and practices.

Punitives fines provide no incentive to attack these major causative factors involved directly or indirectly in most mine accidents. Also, the cost of penalties which we will be forced to incur, not

only in terms of punitive fines, but more importantly in terms of reduced productivity, jeopardizes the viability of our very industry.

Trona, of itself, has no present market. it must be converted to basic chemicals, such as soda ash or bicarbonate of soda before it has value. Competition for our markets is keen, not only among the trona procedures, but from synthetic soda ash procedures and other alkali manufacturers.

For this reason, simple pass along price increases to cover the increased cost of doing business under this proposed act are just not feasible.

I am not suggesting that a strong safety law is not necessary, nor am I implying that major improvements in mine safety are not worth the price.

Our records, as I have stated previously, attest to the fact that the safety and health of our miners is vitally important. What I am suggesting is that the bill being considered here will dramatically increase our costs contributing to the inflationary spiral with the distinct possibility of deteriorating the good safety results achieved over the years.

In taking the approach that fines must be stiffer, the adoption of more numerous regulations made common to widely diversified types of mining conditions, and enforcement of the law by an agency heretofore unfamiliar with mining does not, in my opinion, legislate the problems associated with mine health and safety out of existence.

I urge your careful consideration of these factors in your deliberation on this bill, and I thank you for your attention and the opportunity to be heard on this subject.

The CHAIRMAN. Thank you very much.

Let me ask just one thing before we continue with the other statements.

The FMC Corp., where do the initials come from?

Is that a condensation of a former name?

Mr. KVIDAHL. No, sir, it is not.

It formerly was known as Food, Machinery and Chemical Corp. But, a number of years ago, our business had diversified enough that that designation was dropped, and we are simply known as FMC Corp. now.

The CHAIRMAN. The mining operation that you described is one division of the company?

Mr. KVIDAHL. It is one operation within the industrial chemical division of FMC Corp., Senator.

The CHAIRMAN. Thank you.

Mr. KVIDAHL. Mr. Bailey will follow.

Mr. BAILEY. My name is Ernest C. Bailey, general manager of the Allied Chemical Corp., Green River, Wyo., Trona Mine and Refinery.

We at Allied wish to thank you and other members of the committee for the oppotunity to present our views on S. 1302, a bill to promote safety and health in the mining industry.

We have been in operation since 1968, and presently employ over 1,000 people at our location of which approximately one-half work underground. During this time, we have enjoyed a safety record that compares favorably with all industry.

Our presentation today is to reflect our concern about S.1302 and its potential impact on our safety program.

The proposed legislation concerns us because it implies a sameness to all mining operation by assuming that the safety and health of employees in the mining industry can be advanced by application of common standards, rules and regulations.

Furthermore, the bill includes highly punitive enforcement measures against operators in the hope that this will provide sufficient motivation for improving safety and health in the mining industry.

We believe both premises are an over-simplification of a very complex problem.

First and foremost, all mines are not the same. They vary considerably in work conditions and potential hazards. For that reason, an effective safety and health program should have standards, rules and regulations specifically for that mine environment.

The coal standards become applicable to trona mines under S. 1302, but there is simply no fact or reason to support this. The conditions in coal and trona are vastly different. Trona is nonflammable and fire-resistant. Thus, the application of those standards to our mine will only succeed in increasing our costs and decreasing productivity. The basic objective of improving safety and health appears to be secondary to the enforcement of common standards.

The second major thrust of S. 1302 is to use highly punitive measures against operators for noncompliance with standards. Also, little opportunity, if any, is provided for procedural due process in S.1302.

Throughout the bill the procedures are heavily weighted to favor the agency in any disagreement over compliance. The qualification standards for inspectors under S. 1302 appear to be lower than under the existing Metal and Nonmetallic Safety Act.

The two major points just expressed cause us concern and serious doubt in our minds as to whether S.1302 might weaken our employees' dedication toward safety.

Certainly, compliance to meaningful standards that advance safety and health programs should be expected and enforced. However, noncompliance on the part of operators is not the major cause of accidents in the trona industry.

Over 85 percent of our disabling injuries are caused by an unsafe act by an employee. In those cases, a safety procedure was not followed, or there was carelessness in performing a routine task, or there was lack of safety awareness. To reduce the frequency of this large majority of injuries, a high degree of motivation and safety awareness by all employees is necessary.

In addition, we feel employees must be fully trained in safety procedures as well as in the basic skills required in their jobs. Because of this belief, we are spending in excess of $2 million annually on over 50 separate training programs. Included in this effort is a 12-week miner training course in which all new miners are enrolled. The course introduces all aspects of mining at our location to these new employees, with special emphasis on safety procedures and potential hazards.

Following graduation, continued training is provided on the job by an experienced instructor until the employee is fully qualified to do this job safely. This may require an additional 1 to 3 months, depending on the individual.

During the past year, we graduated over 250 from this course alone, with a significant downward trend being experienced in accident frequency.

Certainly, the establishment of proper standards, rules and regulations are important, and compliance is needed by all persons involved. Our experience, however, has been that vigorous training and educational programs have been very fruitful in achieving higher levels of safety.

Thus we believe a continued review of existing standards for our industry with strengthening, where needed, would more properly address itself to our problems than a complete revision of standards and administrative procedure as proposed in S. 1302.

Mr. Chairman and members of this committee, we appreciate your attention and consideration in this very important matter.

I will be happy to try and respond to any question you may have.

The CHAIRMAN. Thank you very much, Mr. Bailey.

We will go right on to Mr. Zumwalt and then return to the panel for questions.

Mr. ZUMWALT. Mr. Chairman, my name is Glenn Zumwalt.

I truly appreciate the opportunity to testify on S. 1302.

I am the mine operations superintendent for Stauffer Chemical Co. of Wyoming. I am responsible for all of the mining operations, as well as the safety and welfare of the mine employees at Stauffer's Big Island mine located near Green River, Wyo.

Stauffer's Big Island mine is an underground operation where we extract mineral trona, hoist it to the surface, and process it into high purity commercial soda ash.

Stauffer currently employs 518 persons at its Big Island mining and refining operation, of which over 40 percent work in our underground mine.

Stauffer plant and mine construction began in 1960 with the first production of soda ash in 1962. Stauffer's Big Island operation has expanded steadily since its begining in 1962 to its current mine production level of over 3 million tons of trona per year.

The mining conditions encountered in our mine are similar to those in the other trona mines in the Green River Basin. Our mining operation is classified as a room and pillar system utilizing conventional mining techniques.

Four district mining areas are equipped completely as production mining sections and are sequentially scheduled to provide the required mine production. Each production section is using a conventional five-step mining cycle.

This cycle consists of:

One: Roof bolting to provide proper roof support.

Two: Top cutting to provide good roof control and consistent rock fracture during blasting.

Three: Drilling to allow proper placement of explosives to fracture the trona.

Four: Blasting to fracture and deposit the trona for gathering.

Five: Loading and hauling, where the trona is gathered and loaded into vehicles which transport it to a conveyor loading point.

I mention these things just to give you some idea of how our mining system fits into the mining industry.

Stauffer's Big Island mine is classified as a gassy mine by the State of Wyoming and MESA. Methane gas from surrounding oil shales is continuously liberated into the mine atmosphere during the mining operation.

The primary safeguard utilized by Stauffer to insure that methane gas does not concentrate beyond safe limits in the mine atmosphere is our ventilation system.

Our secondary safeguard is consistent monitoring of the air at the mining faces. Of course, all equipment used in the face mining operation is permissible equipment approved by the U.S. Bureau of Mines.

Safety at Stauffer has never been segregated from the operating responsibility. Therefore, the welfare of the employees receives prime attention as part of our daily management function.

Training and education are an integral part of our operational scheduling. Mine orientation and training is not only required prior to assignment of work, but it is a continuing process for all employees, including supervisors. A special training crew has been established to train prospective equipment operators as well as to retrain experienced operators in the performance of their jobs. This training crew rotates on one of the idle production sections and is supervised by one of our best qualified foreman.

A manual of safe job procedures based on individual job analysis is used as the basic training tool for the crew and sets forth the ironclad rules under which we operate. Our philosophy is embodied in the statement, "No job is worth doing that creates the risk of an accident."

The proof of Stauffer's safety philosophy and safety program is in its record. Stauffer Chemical Co. of Wyoming has never had a fatality since operations began in 1961. Our safety record is excellent and still improving.

In 1975, our disabling frequency rate was 0.98 accidents per million man-hours worked. There was one accident last year. Our previous 10-year average was a low 2.4. Comparable figures for all manufacturing are much higher.

We have been able to achieve this record and continue to improve our performance through the strength of our employee safety attitude. Working safety has become a competitive goal for everyone at Stauffer, and our success is the basis for our employees' pride in their achievement.

Our goal for 1976 is a disabling frequency rate of zero. We are currently pursuing that goal with enthusiasm, and we are going to make it.

The trona industry currently is inspected by MESA under the 1966 Federal Metal and Nonmetallic Mine Safety Act. It is under this act that we in the trona industry have been able to attain such an outstanding safety record.

We recognize that there is still considerable room for improvement in both health and safety in the mining industry and we heartily support meaningful programs that will help attain this goal. Such programs would have to include training and education of mine operators and mine employees, development of technology to solve the tough health and safety problems of our industry, and finally convincing all those in the mining industry of the logic of promoting a safe operating and working attitute.

We, in the trona industry, are convinced that the new thrust that will have the next, and most major, impact in reducing accident rates will be one that addresses itself to the unsafe act in addition to the unsafe condition. The unsafe act is not committed with the intention of creating an accident but in ignoring of what will result from the act. The solution still is education and training.

We agree with the basic purpose of S. 1302, to improve health and safety in our Nation's mines. However, the bill takes a completely unrealistic approach to achieving this goal.

The bill combines all mine health and safety regulations for coal, metal and nonmetal mines under one act, an amended Coal Mine Act. This assumption of basic similarity of mining conditions affecting health and safety is unsound and will adversely affect the logical development of health and safety programs in our industry. The bill also transfers administration and enforcement authority from the Department of Interior to the Department of Labor under the assumption that Interior's dual responsibility for health and safety and for mineral production is not compatible. We believe that not only are these responsibilities compatible, but that they must be administered with a great deal of combined effort toward common goals.

Our industry has found it necessary, desirable and effective to combine the administrative responsibilities for safety and production in a single management system in order to keep the two responsibilities in balance with one another and to insure common goals. Our production and safety records demonstrate the validity of this philosophy.

The bill, S. 1302, contains the potential of causing diminishing safety returns from promulgating new standards and enforcing them with the threat of tough penalties. The bill establishes a system of mandatory civil penalties to be levied on those operators who violate any standard rule, order or regulation promulgated pursuant to the act with or without willful intent or knowledge. These penalties are so generally applied and unduly harsh that they seem to be based on the idea of punishment rather than the improvement of conditions affecting health and safety.

We maintain that the enforcement of S. 1302 through the penalty provisions it presently contains would be very detrimental in promoting the improvement of safety attitudes, would thwart the spirit of cooperation that is needed to develop solutions to health and safety problems and would provide no positive encouragement for those who are currently exhibiting good safety performance to continue to do so.

Thus, the goal of health and safety appears to be subordinated to the goal of transferring authority from one Federal agency to another and to imposing unnecessarily severe fines and criminal sanctions upon the mining industry.

The logic and approach in the present Metal and Nonmetallic Act is sound, and this act should be used as the vehicle for improving health and safety in the noncoal mining industry.

The existing act does not provide for civil penalties for general violations, but does specifically provide for withdrawal or closure in instances of imminent danger and failure to abate violations.

This method of enforcing safety standards clearly demands that safety violations be abated and imminent danger situations be dealt with immediately. There are no alternate methods of punishment that may ease the inspectors' or operators' consciences, but a clear-cut mandate to eliminate the hazard.

The present act also provides for educational and training programs to help promote health and safety awareness and action in the industry. These programs are becoming increasingly important to the industry.

The act also has the flexibility to address itself to changing mining conditions and technology by the promulgation of new standards, and the revision or revocation of old standards.

Our industry shall continue to log excellent health and safety records through education, research, innovation and motivation. Such an attitude exists under the present enforcement system, but we question whether it can be preserved under the punitive enforcement provisions of S. 1302.

We submit that our success is no accident. The methods used in establishing our record are tried and proven techniques which can be applied broadly in the industry. If health and safety is truly the goal, why have not the basic premises proven by the leaders of mine health and safety been recognized in S. 1302?

We have studiously reviewed the bill, and it is our consolidated opinion that S. 1302 will not improve health and safety in our mines. We also feel that, if enacted into law without considerable revision, the bill could have a detrimental effect on the very foundation needed to improve safety performance—attitude.

Our industry has developed its safety performance through an attitude of cooperation by which we positively address safety improvement without the threat of punitive fines.

We believe the programs we currently have in effect will insure excellent safety in our mines without the increased administrative burdens that are proposed by S. 1302.

Our detailed comment and objection to specific provisions of S. 1302 is contained in the statement you have.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Zumwalt.

I have not had the opportunity to review the objections to specific provisions that you all combined in one paper of specific suggestions and observations on the bill. It is a joint effort?

Mr. KVIDAHL. Yes.

The CHAIRMAN. We did not get it until last night, but we will certainly review them.

I should have said Senator Randolph, who has a great concern in this area, desired to be at all of these hearings when we are dealing with this subject matter and others, but he is otherwise engaged as chairman of our Subcommittee on the Handicapped, and regrets he cannot be here, although he has demonstrated his deep concern by making it possible for us to have this demonstration project [indicating model].

If you are going to be here later this morning, there will be a demonstration. I understand someone will be here in a half hour to demonstrate it.

That leads me to the first question to get the trona mining scene in my mind.

You say conventional mining methods are used. Does that mean conventional trona mining methods?

Mr. KVIDAHL. No, sir.

I think reference to conventional mining techniques refers to modification of the basic coal mining techniques.

We use equipment which is very similar to that employed in coal mining. There are some slight basic differences between our various mines. But we use the conventional activity of blasting out the rock from the face, loading with a loading machine into shuttle cars, and then we roof bolt for control of the back and drill, and repeat the cycle again—blast, load, so forth.

The CHAIRMAN. There is one element in conventional coal mining that is not in your operation, and that is the use of the continuous miner——

Mr. KVIDAHL. We also use continuous miners.

In our particular mine at FMC we have two types of continous miners.

The CHAIRMAN. You did not include that in your description. Blast and load, you said.

Mr. KVIDAHL. No, sir, I did not, because that is what is referred to as the conventional method of mining. The continuous miner is a variation of that. We do continuous miners also.

The CHAIRMAN. But not in all operations to liberate the product. Some can be done by blasting and loading. It breaks up that way?

Mr. KVIDAHL. That is correct.

The CHAIRMAN. And in other areas you go in and have to use continuous miner?

Mr. KVIDAHL. Yes; use continuous miner.

We use that primarily in our development area where we are developing new entries.

The CHAIRMAN. In that regard, it is somewhat different from coal?

Mr. KVIDAHL. It does have its differences.

In our equipment, although it was basically adopted from coal mining, we have had to strengthen—and our equipment is much more massive in that trona is much harder to cut than coal, but it is basically very similar.

The CHAIRMAN. The rock is harder rock then?

Mr. KVIDAHL. Yes, sir, it is.

The CHAIRMAN. Is trona a sedimentary deposit?

Mr. KVIDAHL. It is a sedimentary deposit, yes, sir, of this salt, sodium sesquicarbonate, a brown massive appearing rock.

The CHAIRMAN. You see, the two of us here, Mike Goldberg, who was new to our committee staff and a very valuable new member, he and I have not been there. He called it white coal. You can see how wrong he was.

Mr. KVIDAHL. It has been referred to as white coal.

The CHAIRMAN. Erroneously, because it is brown.

Mr. KVIDAHL. It is brown, but it would appear white when you see it as it dries or air dries.

The CHAIRMAN. The cutting edge, continuous miner, is for passageways, that is clearing new area for access.

Mr. KVIDAHL. Generally, that is what we use the continuous miners for, to develop new entries, and then lay out our conventional panels.

The CHAIRMAN. Now, does this seam layer have different horizons? Does it rise and fall, or is it pretty much level?

Mr. KVIDAHL. It is surprisingly uniform. You will find some variations in the floor. It would resemble that of an old lake where the material was deposited, and perhaps some wave action lifted portions of that up. It is surprisingly uniform.

The CHAIRMAN. You have chambers, corridors, mining out in blocks like they do in most coal mining——

Mr. KVIDAHL. Yes, sir.

We mine with several techniques that vary from company to company, but I would say the bulk of it is mined by the room and pillar method.

The CHAIRMAN. Do all three mines agree with your operation, Mr. Bailey and Mr. Zumwalt?

Mr. BAILEY. Yes; it does, with one exception.

We also, at Allied Chemical, have what we call long-wall mining techniques.

The CHAIRMAN. That is what I was going to ask. That is why I asked about horizons, whether it is fairly even.

You have long wall. That comes to another situation.

Is your whole operation long wall?

Mr. BAILEY. No.

We have all three methods of mining. Conventional method, continuous miners and long walling.

The CHAIRMAN. The next observation concerns the three fans, changing fan blades, you can get the flow of air that takes care of the methane——

Mr. KVIDAHL. Yes, adequate air ventilation.

The CHAIRMAN. I want to get a comparison here.

You are without long wall and you with long wall. On this flow of air, it is not a different situation?

Mr. BAILEY. Not really. In all cases you have to maintain minimum airflows.

The CHAIRMAN. That is right.

In maintaining, it is not easier on long wall than when you were dealing with these chambers?

Mr. BAILEY. Not necessarily.

The CHAIRMAN. I do not know if you were here last week concerning the Scotia hearing.

There was a problem getting enough air in there to get the gas out.

Mr. ZUMWALT. To explain a little bit our operation here, so we do not get confused, we do not have the continuous miners, nor do we have long wall. We are strictly conventional. We have three different sets——

The CHAIRMAN. When you say sets, you are blasting load——

Mr. ZUMWALT. Yes.

The CHAIRMAN. How do you clear out corridors to get in there—blast?

Mr. ZUMWALT. Yes, we first cut roof, and it is kind of unique. We have a smooth roof, and we control our ground conditions as well.

And getting back to ventilation, Senator, we again often take a large amount of air into the mine to take care of methane liberation. We have put in a fairly great quantity of air—well, usually anywhere from 3 to 4 times the minimum requirement by law—well, 3½ times as much as our minimum requirements at the mining area.

The CHAIRMAN. What are your velocity requirements under law?

Mr. ZUMWALT. We do not have velocity requirement that coal has. We have quantity requirements. The quantity requirements are 6,000 cubic feet in the last open crosscut, Federal requirement, and it is nine in coal.

We currently operate under minimum requirements self-imposed of 20,000.

Our type of ventilation is similar. Our quantities may not be identical to our neighbors. We run a little larger drift than they do and, therefore, we run fairly larger quantities.

The CHAIRMAN. How long have you been under this regulation concerning quantities?

Mr. ZUMWALT. The 1966 Act put us under this. We were inspected prior to the 1966 Act. We were inspected by the Bureau of Mines under the Coal Act at that time.

Mr. KVIDAHL. The order from the Secretary, order No. 1940 from the Secretary of the Interior, that dates back to 1944. We were inspected by the Bureau of Mines prior to the Metal and Nonmetal Act, because we are located on Federal grounds.

The CHAIRMAN. All of you?

Mr. KVIDAHL. Yes.

The CHAIRMAN. What kind of lease do you have?

What kind of operation?

Mr. KVIDAHL. Actually, we have three landlords, Senator. The Federal Government owns every other section of ground. The Union Pacific Railroad, under that land grant that they received for putting the Transcontinental Railway through on the alternate sections. And within each township, that is within each 36 sections, two are reserved for public schools. They belong to the State.

So we pay royalties in the case of Allied and FMC to the Federal Government, the Union Pacific Railroad and to the State of Wyoming. In the case of Stauffer Chemical, I believe they have a joint ownership with Union Pacific.

The CHAIRMAN. You are in one of the alternate sections?

Mr. ZUMWALT. No.

Mr. KVIDAHL. We all have leases.

Mr. ZUMWALT. Stauffer Chemical Co. of Wyoming is operated by Stauffer Chemical. But it is 49 percent owned by the Union Pacific. So it is a separate entity under our company, a separate operating entity.

The CHAIRMAN. That is one question I had to ask you.

What is the nature of the ownership of your company, and it is what again?

Mr. ZUMWALT. Fifty-one percent Stauffer Chemical Co. and 49 percent Union Pacific. Stauffer is operating partner.

The CHAIRMAN. This is not anything to do with safety, but are all of your divisions profitable parts of the larger company?

Mr. ZUMWALT. Of course, or we would not be here.

Mr. KVIDAHL. We like to think so.

We think we are one of the most profitable divisions.

The CHAIRMAN. I wish I had looked at these specifics before, but we might have to communicate with you again. There are a few other questions here. Let us start back with you, Mr. Kvidahl.

I have a question here: In your prepared statement you say that "To presume that all MESA inspectors will willingly make the change from Interior to Labor is not realistic and the very real prospect exists of a change in our area from the competent inspectors we now have to teams of inspectors whose mining background and qualifications are much weaker."

What evidence do you have that there might be a disinclination to make a transfer?

The work will be the same. The agency head will be different.

What evidence do you have on that?

Mr. KVIDAHL. Senator, I have to admit that a lot of that is speculation on my part.

But, in conversation with a number of MESA people and MESA inspectors, obviously they are aware of this bill, and I have asked a number of them what their feelings were. I generalized it and am speculating to a certain degree here.

The CHAIRMAN. We made some soundings, too, and it is to the contrary.

Mr. KVIDAHL. Also I believe in the bill being considered, S. 1302, that there is no minimum experience requirement for the inspector. We are concerned that it is conceivable that if we are all under one act, that we would have the type of OSHA inspectors who are perhaps totally unfamiliar with mining.

The CHAIRMAN. What kind of inspectors did you say?

Mr. KVIDAHL. The OSHA type inspector, who might be totally unfamiliar with mining.

The CHAIRMAN. That is a reasonable concern.

Mr. KVIDAHL. We know that we do have experienced inspectors in our area that have met minimum requirements, have come from the mining industry and are familiar with mining procedures.

The CHAIRMAN. How frequently do inspectors visit your mines?

Mr. KVIDAHL. I believe it is three times yearly, regular inspections, and then we are also subject to spot inspections.

The CHAIRMAN. We did run an exhaustive analysis of citation and closure orders under that coal mine at Scotia that had explosions. We have not done it in your situation.

What is your citation for violation and closure experience?

Mr. KVIDAHL. This would vary, I am sure, from mine to mine and from year to year. I can say we were cited, for example, in 1975, last year, and I believe we had over 200 citations.

Now, that, by itself, sounds like an enormous number, but a lot of those are very minor infractions, and in all cases all but one, I believe, I believe all of those infractions were cleared up before the inspectors left the property.

For example, a piece of loose rock found on the rib. When he found it, it was immediately barred down.

The CHAIRMAN. Have you had any closure orders?

Mr. KVIDAHL. Not to my knowledge.

The CHAIRMAN. How about you gentlemen?

Mr. BAILEY. We have. We have had several closure orders based on limited supply of parts. We have gone through a rather large expansion just recently which has caused considerable upset in terms of meeting the standards and getting the parts required to meet the requirements of the law.

On those cases, we closed off a section or a panel until such time as we could get the material necessary to meet compliance.

The CHAIRMAN. Is this in the area of permissible and nonpermissible equipment?

Mr. BAILEY. Both, yes.

The CHAIRMAN. What standards apply on defining permissible equipment and prohibiting other equipment?

Mr. BAILEY. Permissibility is generally a matter of tolerance in your electrical enclosures.

Mr. ZUMWALT. The same standards apply to trona as apply to coal. Permissibility is defined as that approved by the U.S. Bureau of Mines, the same as in coal.

Our requirement to have permissible equipment is in the mining area, by the last open crosscut we are actually mining, and we can use nonpermissible equipment in our intake airways just like coal.

The CHAIRMAN. So the regulations, at least with electrical equipment, are identical with coal?

Mr. BAILEY. Yes, at the face.

Mr. ZUMWALT. We are under the same schedule. It is the permissibility schedule for electrical equipment, and we are also under schedule 31 for our diesel equipment, which is permissible equipment, and we use diesel in our mine.

The CHAIRMAN. One of you stressed the concern of being put under one act, and you have a different situation than coal.

Who did talk to that?

Mr. KVIDAHL. I believe I mentioned it.

The CHAIRMAN. State it again, if you would, your concern.

Mr. KVIDAHL. I am concerned that if we are brought all under one act, and that the basic differences in mining, for example, of trona, hard rock, or anything, are not recognized, that we have a hodgepodge of regulations which might not only be difficult to meet, but are also superfulous.

The CHAIRMAN. That is not our intention here, and we have cited the provision of our bill.

Mr. KVIDAHL. I think the reason we feel that way, Senator, is that in the bill, S. 1302, it takes the basic Coal Act and it strikes out the word coal, therefore encompassing all mines.

Yet it retains the standards of the metal and nonmetal, and we include the standards of coal mining.

The CHAIRMAN. All right. That is the first I have heard of that. Some people have not attached the same degree of importance that we do to title IV, section 401(b)(1), where we say that mandatory advisory standards relating to mines issued by the Secretary of Interior under the Federal Metallic and Nonmetallic Mine Safety Act of 1966, standards under the Federal Coal Mine and Safety Act of 1969, which are in effect on the date of enactment of this act, shall remain in effect as standards under title I of this [indicating].

I can see now that you go back to the other striking out and go from there.

Mr. KVIDAHL. We moved those standards into the act also.

Mr. ZUMWALT. I believe there are some specific provisions in the Coal Act that actually creates standards that are not part of the standards themselves, which we would be concerned on transferred.

The CHAIRMAN. Your standards in trona, in other areas, under the Metallic and Nonmetallic Mine Safety Act, you have standards under regulations that are common to silver, gold, a lot of other metals and nonmetals.

Mr. KVIDAHL. This is true.

The CHAIRMAN. You are operating under regulations that fit dissimilar mining operations?

Mr. ZUMWALT. We do have specific provisions of those standards which relate to gassy mines, specific provisions that relate to uranium and that sort of thing.

The CHAIRMAN. All of that body comes forward. That is my final observation.

Mr. KVIDAHL. I think this was unclear to us, that this all came forward, and then you strike out the word coal in the Coal Act to make it Mine Safety Act, and then you transfer the standards applying to coal as well as to those which apply to metal and nonmetal, and there is a great deal of confusion.

The CHAIRMAN. That will have to be clarified.

You have described your accident rates underground and surface.

Mr. KVIDAHL. Yes.

The CHAIRMAN. Mr. Zumwalt gave 2.4.

Is that underground or combined?

Mr. ZUMWALT. That is combined. I combined for 10 years, underground for 10 years is similar, it is less than three.

The CHAIRMAN. Mr. Bailey, I did not notice an accident rate from you.

Mr. BAILEY. Our accident rate is averaging around five to six.

The CHAIRMAN. That is combined underground, underground and surface?

Mr. BAILEY. Yes.

The CHAIRMAN. What qualifies as an injury to be a statistic?

Mr. KVIDAHL. Well, a lost time injury.

The CHAIRMAN. One lost day?

Mr. KVIDAHL. Yes.

The CHAIRMAN. One lost day?

Mr. KVIDAHL. I think you are allowed, under the rules, 1 day for observation. For example, if a man has a sprain, and you are not sure whether that is a broken limb or something of that nature, one day is permitted for observation to determine the extent of the injury. If it extends beyond then, I believe it is counted as lost time.

Mr. ZUMWALT. We utilize national safety count Z–16 code in our accident reporting system.

The CHAIRMAN. How many cases do you have right now on your workers' compensation, employees who are receiving benefits under workmen's compensation; do you know?

Mr. KVIDAHL. I would guess two or three. I would estimate that in my case.

Mr. ZUMWALT. That would be my estimate.

Mr. BAILEY. I am about the same.

Mr. ZUMWALT. In fact, I do not know of one offhand, but we may have it.

The CHAIRMAN. Are you familiar—I would not suspect you necessarily would be familiar with the provisions of the Wyoming Workers' Compensation Act and what the benefits are—that is not your area—but are you familiar with it?

Mr. KVIDAHL. Just in generalities, we are aware of it. I believe it permits maintenance of a wage up to two-thirds of his normal salary for some period of time.

The CHAIRMAN. It sounds as though you are meeting the Presidential Commission's recommendation for a national minimum.

Mr. KVIDAHL. Yes.

The CHAIRMAN. Excellent.

If we go to Federal standards of workmens' compensation, you will not be upset at all.

Do not answer that. [Laughter.]

That is another matter for us. It has been under study for so many years. We are way behind time here. This is our responsibility for delay. We are way behind the Presidential Commission's call for a national standard.

We started off some years back, and they said we are going too fast. Now, I think we will probably get slapped for being too tardy in bringing standards, minimum standards. Now, I think that is about all I have, gentlemen. It is an excellent review of your operations. Your competition is synthetic, really; is it not?

Mr. KVIDAHL. We have really two basic competitors, synthetic and then the caustic soda, which is produced as a byproduct of chlorine manufacturers. That is also a strong alkali and can compete in many cases.

The CHAIRMAN. In glass manufacturing?

Mr. KVIDAHL. Yes.

The CHAIRMAN. I tell you quite frankly that I know of glass manufacturing operations, and obviously your product is vital, and there are problems now transportationwise; is that right?

Mr. KVIDAHL. Yes, sir.

The CHAIRMAN. I hope you stay healthy. I am very impressed with your training emphasis, education and training.

Thank you very much, gentlemen.

Mr. KVIDAHL. Thank you very much.

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The CHAIRMAN. The National Independent Coal Operators' Association, Mr. Cloyd McDowell. We appreciate your being here, sir.

STATEMENT OF CLOYD D. McDOWELL, PRESIDENT, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION, ACCOMPANIED BY DAVID SMITH, ATTORNEY, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION; AND MICHAEL KEANAN, ATTORNEY. NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION

Mr. McDOWELL. Mr. Chairman, members of the committee, I am Cloyd D. McDowell, president of the National Independent Coal Operators' Association. With me are attorneys David Smith and Michael Keanan, who are members of the firm representing the National Independent Coal Operators' Association.

I want to thank the committee for this opportunity to discuss S. 717. NICOA always appreciates the opportunity to be heard by Congress and we sincerely hope that our comments will assist in the formation of constructive legislation.

NICOA's membership is comprised of small and medium sized coal operators located in the principal coal producing States of this country. These companies are all vitally interested in the bill which we are considering today. Of particular concern is the fact that S. 717 imposes complex administrative and technological requirements. The technological and administrative burdens created by any mandatory regulations fall most heavily upon members of our association; therefore, fair and reasonable consideration of our problems and appropriate assistance from the regulatory authorities are essential to the continued strength and productivity of our segment of the coal industry.

At present the independent coal companies produce about 20 percent of the annual national production. We could produce more, but our contribution to the nation's energy supplies is declining due to the ever-increasing complexity of doing business—a complexity which is increasing primarily because of Federal laws and regulations.

Federal records indicate that the small mines have the best health and safety record in the Nation's industry. Yet companies with a total employment of 20 persons or less are subject to precisely the same complex laws and regulations as are corporations employing over 5,000 persons. We do not claim to be exclusively responsible for the improvement in mine health and safety. Congress, the Mining Enforcement, and Safety Administration, our excellent workforce and our coal mine operators all should be recognized in the sincere efforts being made to improve an inherently dangerous industry.

We ask Congress to remain aware that coal mine operators, especially the small mine operators who share a life in the local community as a part of the mine workforce, have made tremendous strides toward achieving the ultimate goals of all here today. A small mine operator has special problems and special needs. In particular, the small operator has difficulty meeting detailed procedural requirements, keeping comprehensive records and filing voluminous reports. This means that not only is it difficult for the small operator to comply with the regulatory provisions imposing such burdens, it is also extremely difficult

for him to avail himself of the legal processes for relief when improperly charged with violations under the bill.

Accordingly, we are here today seeking fair treatment for the small mine operator under the laws of the United States.

We firmly believe that certain of the provisions of S. 717 will deny the small operator equal treatment under the law and will present us with a set of unreasonable burdens. A careful analysis of S. 717 indicates that this bill is basically procedural in nature. The provisions of this bill have the cumulative effect of denying the small operator the fundamental right to be heard.

Our complaint is best exemplified by a comparison between the language of section 106(c)(3) and section 114(d)(2). When a miner alleges discrimination under the act, pursuant to section 106(c)(3) the "complainant shall have the right . . . to file an action in his own behalf before the Commission. . ."

However, when a small coal mine operator receives an adverse decision by an administrative law judge that may affect his entire business, and consequently the employment of all the miners at the mine, section 114(d)(2) provides that, "Review by the Commission shall not be a matter of right . . ."

This dichotomy of treatment between the various segments of the industry is without a sound or equitable basis. We believe that Congress should provide equal treatment for all and should give a miner, as well as a mine operator, the right to review by the Commission of all issues. The interest of health or safety is not hampered by providing that all citizens be entitled to be heard.

Several other provisions of S. 717 deny the small operator essential and fundamental rights by precluding procedural rights guaranteed by the Administrative Procedure Act, 5 U.S.C., section 501, et seq., and by eliminating requirements for administrative determinations based upon findings of fact and conclusions of law.

Specifically, section 102(a) of this bill provides for promulgation of mandatory regulations, ". . . without regard to any reference . . ." to 5 U.S.C., sections 556 and 557, and thereby eliminates a sound basis for administrative rules. Section 102(b) states that any "emergency temporary standard" shall be promulgated, . . . "without regard to the requirements of . . ." the Administrative Procedure Act.

Section 111(k) of this bill presents a very grave situation for all mine operators and particularly for the small operator. This section provides that in proposing civil penalties ". . . the Secretary may rely upon summary review of the information available to him and shall not be required to make findings of fact concerning the above factors." Thus, in the day of the sunshine laws, Congress will be providing for closed door governmental determinations of penalties against citizens who happen to be mine operators. S. 717 makes no provision in levying a civil penalty for a determination of even the fact that a violation occurred or of the negligence or lack thereof on the part of a mine operator. These legislative omissions, coupled with failure to provide for a hearing by the Commission prior to assessment of a civil penalty, means that the small mine operator will be told that he must pay a fine of up to $10,000 for each alleged violation cited without being provided any record upon which he can question such fines.

Other points of concern to us are the extremely short time frames provided by section 106(d) and section 108(e)(1). Section 106(d) allows only 15 days to challenge the issuance of an order or notice, and section 108(e)(1) provides only 10 days in which to challenge an imminent danger closure order. When these very short periods are compared to the extended time period under section 105(g), for issuance of citations up to 6 months after an occurrence, we seriously question whether this committee truly intends to place the mine operator at such a great disadvantage. Adequate time in which to consider and prepare a response to a citation is very important and cannot possibly have an adverse effect on health or safety, because the operator must abide by the germs of a citation until the issue is resolved.

The committee is urged to provide a minimum time period of 30 days within which each citation may be challenged. Under this bill the Government will have up to 6 months to decide whether a violation occurred and it is only fair that a mine operator should have a reasonable time to decide whether he agrees with such determination and, if he does not agree, to take the steps that are necessary to preserve his rights. We believe that any period less than 30 days would be unreasonable. Equal procedural treatment for all persons affected by this act will provide a sound basis for resolving complex issues in a manner that will be most fair to all.

In any event, the main point we are emphasizing is that care should be taken in this bill to insure that legal procedures are equally available to all who are affected by the act.

NICOA recognizes the necessity for establishment of the advisory committees to assist the Federal Government in resolving the complex issues facing the mining industry. The concepts established by section 103 of the bill contemplate an effective exchange of ideas and a fully cooperative effort toward the attainment of maximum health and safety in the mines. NICOA has been in the forefront of those interested in the establishment of advisory committees to provide maximum input from all segments of mining to continually work to improve health and safety.

We sincerely appreciate the committee's consideration of the importance of advisory committees in achieving a truly effective and workable system of mining standards. Advisory committees composed of miners and their representatives, Government officials, representatives of large and small mine operators and other knowledgeable persons can provide the solutions necessary for the promulgation and implementation of standards that will achieve the purposes set forth in this legislation.

Advisory committees provide the vehicle whereby the knowledge and experience of all concerned can be properly utilized to assist the Government in achieving the best results. The technical knowledge and experience of the various groups representing the different elements of the mining industry are invaluable if truly effective standards are to be achieved. Consequently, we feel that the advisory committee provisions of S. 717 should be made mandatory rather than discretionary.

Federal mining regulations and standards are promulgated for the purpose of providing identical mining conditions throughout the Nation. Although this is a meritorious purpose, it must be realized that

mining conditions vary so greatly from mine to mine that in order to provide the maximum safe working conditions particular mines will, of practical necessity, require variances from some standards.

A given mine may be able to fully implement all promulgated standards, but a mine only 200 feet away may have significantly different strata conditions. Due to adverse roof conditions, for example, the neighboring mine operator may have to utilize different safeguards. Since such safeguards would enhance safety at his mine, a variance would not only be appropriate; it would be indispensable. In many instances if a mine operator adhered to a particular standard, it would cause a diminution of safety in his mine. Undulations in seam heights the occurrence of underground geological faults, unusual liberation of methane gas, and the encountering of water hazards are among some of the conditions that can vary from day to day in mining operations. Due to variable conditions, application of an inflexible mandatory standard could prove unsafe and there must be a legal mechanism for a variance to counteract dangerous conditions.

It is within the above context that we earnestly question the language of section 102 of the bill. Since mining conditions continually change, it may be vital for the health and safety of all concerned to request a variance from an administrative or legislative standard in effect under the Federal Coal Mine Health and Safety Act of 1969 or under the amendments proposed by S. 717.

Section 203 of this bill eliminates section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 which authorizes modification of standards under the act. Section 102(f) of S. 717 further compounds this most serious problem by providing that no variances shall be permitted for any standard promulgated prior to enactment of this bill. We urge that the committee carefully consider the aforementioned problems in light of the vital need for variances to provide for maximum health and safety under changing mining conditions. The redrafting of the appropriate provisions of S. 717 to allow for variances from both the statutory and regulatory standards will provide the only method to guarantee a safe and healthful working place under changing mining conditions.

NICOA recognizes the need for appropriate training and agrees with the concept and with the goals sought to be achieved. The training program proposed by section 116 not only mandates training regulations, but also creates a very sizable administrative burden for every company having to operate under such regulations. As indicated previously, this burden will fall most heavily on the smaller operators. As a matter of fact, NICOA does not, at present, see how many of the smaller operations that have successfully trained people on the job for years will be able to even begin to provide the type of training mandated, let alone maintain the records which will be required. Thus NICOA believes that before the obligations which S. 717 would create may be placed upon the mining industry, the Secretary of the appropriate department should first make available the types of facilities which can provide the mandated training.

We propose that this bill include an authorization of funds for the Secretary to establish regional training centers at each district headquarters of the Mining Enforcement and Safety Administration to

provide continual ongoing classes for the types of training that are required by this bill. These classes should be available to all segments of the industry. In our view, Federal funds expended to make health and safety education and training readily available to all will do more for safety than any other provision in the proposed bill. In making this suggestion, we would like to point out that the authorized representatives of the Secretary who regularly inspect coal mines are themselves thoroughly educated in the requirements of the law and, accordingly, they are the ideal persons to educate those whose primary job is to work in the mines. The small mine operator does not have the facilities or the manpower to perform the type of sophisticated training that is required to fully acquaint miners with the vast amount of Federal regulations affecting their daily activities.

Since many of the States have initiated training programs the same or similar to those proposed in S. 717, we would like to recommend where some programs have been adopted that they be substituted for the training provisions if they meet or exceed regulations adopted by the administration. In Kentucky, for example, the legislature has provided a training program requiring 40 hours of training for new employees, 80 hours annual training for all miners and provision for on-the-job training when an employee changes from one job to another. This training will be furnished by established schools and will be uniform throughout the State.

In summary, we appear before you today to request your consideration of three concepts basic to our existence: First, we urge you to review S. 717 with a view toward keeping administrative and procedural complexities to a minimum; second, we urge you to redraft the bill to provide adequate, flexible and equal access to the administrative review, rulemaking and adjudicatory processes in order that we will be accorded procedural fairness and equity in all our contacts with the Federal Government; and, third, we urge you to provide funding for direct educational and training assistance to all members of the industry so that safety and health in the Nation's mines will be further improved. If our proposals are accepted, we sincerely believe that a substantial contribution will have been made toward greater understanding and mutual cooperation among all those who will be governed by the proposed legislation.

I sincerely appreciate this opportunity to meet with you today. Thank you very much.

The CHAIRMAN. Thank you, Mr. McDowell. You have given us a lot to consider with respect to the last points, the training, we certainly don't want to impose an obligation which would be a burden that would make it very difficult for some operators to meet the training requirements. Last year we did talk about regionalization and associations contributing maybe to training within the region at a central location. Something will be done to develop an opportunity along the lines you suggest. We don't have time to discuss it fully today, but your testimony will be part of our deliberations on how we can make sure that we are not imposing an impossible burden. We are mindful of the fact that we have to require adequate training, which you accept, of course.

The whole area of procedural requirements and the steps necessary in creating standards is going to be fully reviewed, too, and your statement will be very useful in this regard.

We have received specific questions, but I think that your statement covers the points that occurred to us. It is a very full and complete statement and very helpful, and we do appreciate your statement. It would be very helpful if we run into any log jams along the way if we can be in touch with you. Thank you very much.

Mr. McDowell. Thank you.

The Chairman. We are now going to hear from the spokesman for the Cement, Lime and Gypsum Workers International Union.

Gentlemen, welcome. Yes; you are both mentioned here on my agenda. Two are mentioned and two are here. We appreciate your being here.

STATEMENT OF THOMAS MIECHUR, PRESIDENT, UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, ACCOMPANIED BY DONALD SPATZ, DIRECTOR, RESEARCH AND EDUCATION, UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION

Mr. Miechur. Thank you, Mr. Chairman. My name is Thomas Miechur and——

The Chairman. By the way, you are here from Chicago?

Mr. Miechur. Yes, sir. I am president of the United Cement, Lime and Gypsum Workers International Union. I would like to express my appreciation for this opportunity to discuss the Mine Safety and Health Amendments Act of 1977. Accompanying me today is Mr. Donald Spatz, research and education director of our organization.

The 16th International Convention of our union met in October, 1972. At that time the convention's Occupational Safety and Health Committee recommended, "that local unions and the International Union support programs to eliminate the Bureau of Mines and turn all of the inspection of plants, quarries and mines over the direction of the U.S. Department of Labor."

This decision was not reached lightly by our convention delegates, nor has our position changed in the 4 and one-half years since that position was adopted. Though the Bureau of Mines safety and health responsibilities have been delegated to the Mining Enforcement and Safety Administration, the problems which formed the basis for our 1972 position still exist.

It is for this reason that we strongly support S. 717. This legislation is long overdue and we urge Congress to enact it as swiftly as possible.

The United Cement, Lime and Gypsum Workers International Union represents well over 6,000 miners throughout the United States. They mine and quarry a wide variety of nonmetallic minerals such as limestone, shale, kaolin, clay, tale, sand, gravel, asbestos and gypsum. In addition, our members manufacture building materials such as portland cement, wallboard, roofing materials and concrete products.

In 1975 I submitted a written statement to this committee in support of an improved Federal health and safety program for metal and nonmetallic miners. At that time about one in every six of our members were covered by the Metal and Nonmetallic Mine Safety Act. We were seeking legislation to give these members the same rights that the majority of our members enjoyed under the Occupational Safety and Health Act.

Today the situation is reversed. Last year attorneys for the Interior Department, without consultation or notice to our union, decided that our members employed in the portland cement industry were covered under MESA's definition of milling.

Because of this, two in every three of our members are now covered under this inferior Metal and Nonmetallic Mine Safety Act. After being covered for 4 years under the provisions of the Occupational Safety and Health Act, our members were told that they no longer were first-class citizens; that they were no longer entitled to the protections of the OSHA law.

What did our members lose? They lost the right to a formal complaint and inspection procedure. MESA does not have that. They lost their legal right to walk around with the inspector. MESA does not have that. They lost the right to seek administrative and judicial review of inspections. The Metal Act does not provide this to employees, only to the employers. They lost the right to contest abatement periods. They were forced to give up specific and enforceable OSHA standards for vague standards promulgated by MESA, many of which are advisory and not mandatory.

What have our members gained? Nothing. There have been more inspections under MESA than there had been under OSHA. But we have found that quantity does not make quality. We have seen hazards for which notices were issued remain uncorrected many, many months after the date for abatement has expired. We have seen that the lack of civil penalties makes effective enforcement difficult.

We have carefully reviewed the provisions of S. 717. We believe the sponsors have put together a workable and effective Federal program to promote safety and health in the mining industry. It is careful blending of the best provisions of the Coal Mine Safety Act and the Occupational Safety and Health Act.

I would like to comment on several specific parts of the bill.

We support the proposed methods of promulgating standards but suggest that section 301(b)(2) be amended to provide that the advisory committee appointed to review the advisory standards under the Metal Act report back to the Secretary within 90 days rather than 180 days. Many of these advisory standards have existed for a long time and are well known to employers. We feel that those with merit can be promulgated as mandatory standards in a shorter period of time than that proposed in the bill.

We strongly support the inclusion of the "general duty clause" in section 101. Section 104 covering inspections is excellent and would prevent employers from denying their workers the right to accompany an inspector. The complaint procedure and the provisions for administrative review when no citations are issued are essential for protecting a worker's health and safety on the job.

The provisions of section 105 through section 111 which deal with enforcement will give effective power to the administering agency to correct health and safety hazards. We strongly support the concept of civil penalties as a mechanism to encourage continuing compliance with standards. The other enforcement procedures specified in sections 105, 108 and 109 are also needed for unusually hazardous conditions and as sanctions against employers who habitually violate standards and abatement dates.

We strongly support section 112 on Entitlement of Miners and feel such a provision is long overdue. Workers are now asked to choose between their paychecks and exercising their right to a safe and healthful workplace. Employees should have the assurance that if they file a complaint about their working conditions and a subsequent inspection finds imminent danger they will be made whole for lost compensation.

The provisions for mandatory safety training on safe work practice, health hazards, and first aid, our union has attempted to fill this need by scheduling hazard recognition training programs for our safety committee members, but these programs have just scratched the surface. Requiring that an employer provide at least a minimal level of training to all employees is absolutely necessary.

A major factor of the bill is the transfer of all mine safety and health enforcement responsibilities from the Department of the Interior to the Department of Labor. Our convention delegates endorsed this concept in 1972 and our union backs it now. The Department of Interior is in a dual and contradictory role since it is also responsible for increasing mineral production. The Department of Labor would not have such a conflict. It is recognized by our members as the federal agency charged with representing the interests of workers, and we feel it can do the job in enforcing a new mine safety program.

Mr. Chairman, the time is past due for these reforms to become law. We had strong hope that the 94th Congress would act. Unfortunately it did not. The reform of our mine safety laws must not be lost in the shuffle in the 95th Congress and we hope that both the Senate and the House of Representatives will act swiftly in this 1st session.

Our union has not experienced any disasters such as the Scotia Coal Mine in Kentucky or the Sunshine Silver Mine in Idaho. But in 1942 our union did experience a tragedy. At 9:18 a.m. on March 26, 1942, there was an explosion in the quarry in the Lehigh Portland Cement Co. in Saduttey, Pa. Twenty tons of dynamite exploded in the quarry, killing 31 persons, 2 of which were relatives, 1, my father age 51, and the other, my brother, age 21 at the time. I pray we never have any such accident again. But every day our members are exposed to health hazards and safety violations that can be corrected by the strong and vigorous Federal action that this bill will bring.

I thank you for this opportunity to appear here today and present our views before the subcommittee. I would be happy to answer any questions that you may have.

The CHAIRMAN. This is an excellent statement and your support will be most helpful as we make our way on this legislation. This bill would make significant changes to the law. We bring new strengthening provisions to mine safety and health. Anything of major impact, of course,

is not easy and your statement will be most useful in making our way on this legislation.

I do note, of course, your feeling that we have provided too much time in the transition for the consideration of what have been advisory standards and in consideration of whether they should come on into the mandatory area. We have 180 days there and you say 90 days.

We appreciate your desire to get this area on a strong and close basis, as other areas of mine safety are, other mines. I don't know whether that 90 or 180 is that vital, vital to your organization here, but we will certainly consider your views and we will try to see which is the more realistic in terms of getting the right product for the future. This is a transitional situation you have addressed yourself to.

Mr. MIECHUR. Yes, Mr. Chairman. We feel that 90 days are sufficient, but if it is the consensus of the committee that 180 days are more practical and logical with this transition, we are not going to lose our faith in this bill and we are going to continue our strong support of the bill, whether it be 90 days or 180 days. The number of days is really immaterial as far as ——

The CHAIRMAN. Quite frankly, I don't know how many advisory standards are out there that must be reviewed and we just don't have that clear in our record at this point. That would be part of the determination or realities of what period would be best.

In your statement you mention that since your members in the portland cement industry came under the metal act coverage you notice many violations which continue even after the abatement period has expired. Don't the MESA inspectors return to the mine to insure that the abatement requirements are fulfilled?

Mr. SPATZ. Mr. Chairman, they do return and this is where we mention that there has been more quantity than quality. The typical procedure is to return at or about the initial abatement date that is set. Unfortunately if abatement dates can be extended or even if it isn't extended, sometimes the problem is just forgotten about. Our problem is that we have, in the current act, we have no administrative review to force that abatement date to be complied with and there really isn't a procedure for negotiating what a proper period of time is for correction, especially health hazards and long term items like that.

The CHAIRMAN. Well, we also have seen that there can be abatement, but it is a temporary thing and then the conditions revert to the conditions that existed at the time of the violation. This has been a pattern not only in nonmetallic, but coal mines, too. What we are trying to do is reach these very dangerous, very troublesome situations.

I want to ask you, the Metal Act permits the issuance of a closure order if a violation does go unabated. I just wonder if such closure orders have been issued in these cases you have addressed yourself to.

Mr. SPATZ. I know of some orders being issued. I don't know of any orders in any of the plants where we represent the workers that have been carried out and there has been a physical closing in any area of any plant or mine or quarry.

The CHAIRMAN. It is called a closure order if they put a tag on a piece of equipment and say that it can't be used. That is considered a closure order, isn't it?

Mr. SPATZ. Yes.

The CHAIRMAN. Have you seen that? They call it red tagging, don't they?

Mr. SPATZ. Yes. Yes; we have seen that, where they have asked for equipment to be removed from service until it is fixed, especially quarry equipment, trucks, loaders and items like that.

The CHAIRMAN. What are the nature of health hazards in the area that you gentlemen represent?

Mr. MIECHUR. Dust.

Mr. SPATZ. In any mineral processing there are large amounts of dust generated. Another problem that we are particularly concerned about is noise. In the crushing and grinding of raw materials, there are many, many noise sources and these cause hearing loss, which is a substantial problem in our industry. Also dust is a problem. We have no particular problem with chemicals. We do have some problems in bag house collectors. More and more plants are switching back to the use of coal as fuel and this must be ground up. Wh have a number of locations where coal grinding mills are quite dirty and leak. They provide a dust hazard or breathing hazard, as well as flammability, an explosive hazard around the coal areas.

The CHAIRMAN. Do you know whether there are clear standards regulating the amount of dust in the workplace? We do have such in this Coal Act.

Mr. SPATZ. Under the Metal Act there is a standard for portland cement dust. Unfortunately, at this point it is considered a nuisance dust under the TLB's adopted by the American Conference of Governmental Industrial hygienists. We don't particularly feel it is only a nuisance dust. We think that additional studies have to be made, which is another important part of S. 717 in that it authorizes NIOSH to spend more time doing research in metal and nonmetallic mines, besides coal mines and the general industry.

The CHAIRMAN. Do you know whether NIOSH is on the scene and conducting studies of dust and its affect?

Mr. SPATZ. They are studying talc dust in Vermont where we represent——

The CHAIRMAN. What kind of dust?

Mr. SPATZ. Talc dust. This is one of the few programs in the metal and nonmetallic area that NIOSH has taken up. I understand it took them a lot of time to get the thing in place since there isn't any specific statutory authority in the metal and nonmetallic act for NIOSH to enter a workplace.

Mr. Chairman, there a number of other nonmetallic minerals where our members work and we are certainly interested in further research in these areas.

The CHAIRMAN. You mentioned noise as one of the health hazards or problems you face. Do you know what standards control this, or are there clear standards on permitted noise levels for the various mining operations that you have?

Mr. SPATZ. Yes. The Metal and Nonmetallic Act has the same standard on noise as OSHA does. It is identical. What we find is that the enforcement is quite a bit different, the enforcement methods. We have seen situations where MESA makes what we think is a too quick judgment that there are no feasible engineering or administrative controls

and instead orders personnel protective equipment without, in effect, forcing the companies to find what the feasible engineering solutions could be.

The CHAIRMAN. Are there any of your operations where individual protection against noise is made mandatory?

Mr. SPATZ. Yes, definitely.

Mr. MIECHUR. It is really the wearing of ear devices made mandatory by labor contracts.

The CHAIRMAN. How is that enforced, by the way? The noncomplying worker, what happens to him?

Mr. MIECHUR. The noncomplying worker, disciplinary action would be taken against him by the company.

The CHAIRMAN. Has that happened?

Mr. MIECHUR. Not to my knowledge. I haven't heard of any cases of noncompliance.

The CHAIRMAN. But under the contract could there be a suspension or discipline if there were a worker that violated what was agreed to in the contract?

Mr. MIECHUR. It is in the contract that it is a condition of employment that a worker, an employee, who works in a noisy location, a noisy area of the plant, must wear this ear protection and, to my knowledge, it is one of the few labor contracts that provides it is a condition of employment.

The CHAIRMAN. Thank you, gentlemen. It is a very helpful statement and we appreciate your observations. It will be very useful.

[The following information was subsequently supplied for the hearing record:]

CONSOLIDATION COAL COMPANY
INCORPORATED
ONE OLIVER PLAZA
PITTSBURGH, PENNSYLVANIA 15222
TELEPHONE 412/288-8700

RALPH E. BAILEY
CHAIRMAN AND
CHIEF EXECUTIVE OFFICER
412/288-8474

April 26, 1977

Honorable Richard S. Schweiker
347 Russell Senate Office Bldg.
Washington, D.C. 20510

Re: S.717 - Federal Mine Health & Safety Act

Dear Senator Schweiker:

At the March 30, 1977 Labor Subcommittee hearing you asked me for copies of the background data substantiating my testimony that:

> "Through careful analysis of accidents at our mines, we determined that over 85% of all of our accidents could be assigned to a lack of training and education, poor work habits, or lack of motivation. In other words, even if the mine and equipment were in perfect condition and in full compliance with the law, a substantial majority of the accidents would have occurred anyway."

Herewith are our Coal Accident, Injury and Illness reports for 1975 (Bureau of Mines Form No. 6-347). We have summarized the information on these forms in a 133-page booklet broken down into the two main categories of accidents:

	Total	Percentage
Total number of accidents due to "work habits, lack of motivation, lack of training and education"	1,403	86.82
Total number of accidents due to "environment or conditions"	188	11.63
"Gray area" accidents that could have been put in either category	25	1.55
Total Number of Accidents Reported in 1975	1,616	100.00

We hope this information will be useful to you and your staff. Would you please see that these materials are made a part of the hearing record on this Bill.

Yours very truly,

REB/gk

Enclosure

(Editor's Note: The booklet referred to may be found in the files of the Subcommittee.)

NSGA
NATIONAL SAND
AND GRAVEL
ASSOCIATION

900 SPRING STREET, SILVER SPRING, MARYLAND 20910
TELEPHONE: (301) 587-1400

pril 8, 1977

The Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
U. S. Senate
Suite 4230, Dirkson Senate Office Bldg.
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed please find 25 copies of a statement on S. 717, Federal Mine Safety and Health Amendments Act of 1977. The National Sand and Gravel Association appreciates the opportunity to submit this statement and hopes the contents will be of benefit to the Committee in its consideration of this legislation.

Sincerely yours,

Charles E. Hawkins, III
Director of Governmental Relations

STATEMENT BY JOHN L. CURTIS, CHAIRMAN OF THE SAFETY COMMITTEE, NATIONAL SAND AND GRAVEL ASSOCIATION

IN REGARD

TO S. 717, FEDERAL MINE SAFETY AND HEALTH AMENDMENTS ACT OF 1977

BEFORE THE

LABOR SUBCOMMITTEE OF THE SENATE COMMITTEE ON HUMAN RESOURCES

The National Sand and Gravel Association appreciates the opportunity to comment on the legislation being considered by the Committee. My name is John L. Curtis, and I am the Chairman of the Safety Committee of the Association. I am also the President of L. C. Curtis & Son, Inc. located in Watkinsville, Georgia. As a result of both my own company's operating experience and my service on the Association's Safety Committee, I am thoroughly acquainted with the present Federal Metal and Nonmetallic Mine Safety Act and its regulations.

The National Sand and Gravel Association has been the recognized spokesman for the sand and gravel industry for more than 60 years. The Association's members are located throughout the United States and their annual production accounts for a substantial majority of the total U.S. production of sand and gravel.

The National Sand and Gravel Association has been actively involved in promoting safety in the sand and gravel industry for many years. Industry employers are well aware of their responsibility to provide a safe working environment for our employees as well as the impact which a good safety

program has on the financial success of a company. Our program to promote a safe and healthy working environment within the sand and gravel industry will continue no matter what action this Committee takes on the pending legislation.

Sand and gravel is found in most areas of the country. According to the U.S. Bureau of Mines, 7,014 separate locations produced a total of 789 million short tons of sand and gravel in 1975.[1] It is a basic ingredient in portland cement concrete, asphaltic or bituminous concrete highways and most other forms of construction. It is, therefore, found in every type of construction.

S. 717 proposes transfer of the responsibility for enforcement of safety regulations affecting the processing of sand and gravel from the Mining Enforcement and Safety Administration in the Department of the Interior to a new agency in the Department of Labor. This transfer is not justified and would lead to confusion and a loss of momentum in the continuing progress of making the nation's mines safer places to work. The safety record of the sand and gravel industry has shown steady improvement since the commencement of vigorous enforcement of standards by inspectors from the Department of the Interior.

The Mining Enforcement and Safety Administration (MESA) and its predecessor, the U.S. Bureau of Mines, have been responsible for enforcing federal safety regulations for our industry since those standards were first adopted in 1969. That enforcement effort has led to a safer industry for

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(1) U.S. Bureau of Mines, Division of Nonmetallic Minerals, Annual Advance Summary, October 29, 1976.

our employees. According to data developed by the National Safety Council, the accident frequency rate for the surface mining industry, which includes sand and gravel, is better than that for all industries. (2) The frequency rates reported in the 1976 edition of the National Safety Council's "Accident Facts" indicates that the average frequency rate for all industries was well above the figure reported for surface mining.

The fact that the frequency rate for sand and gravel has been declining and is continuing to decline is emphasized by the recent report issued by MESA. Preliminary figures released by MESA for 1976 reveal that the sand and gravel industry has continued to make substantial progress in reducing the frequency of injuries per million man-hours. The salient figures are depicted below:

	Frequency per million man-hours	
	1975	1976
All disabling injuries	12.30	10.07
Non-disabling injuries	8.87	5.59

This is an 18 percent reduction in the "All Disabling" category and a 37 percent reduction in the "Non-disabling" category. (3) These substantial improvements were made despite the fact that the accident frequency rate for the sand and gravel industry was better than the all industry frequency rate. While the ultimate goal must be to eliminate all accidents, dramatic progress has been made toward achieving that goal as a direct result of

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(2) "Work Injury Rates - 1976 Edition," National Safety Council, August, 1976.

(3) "MESA Safety Reviews," Division of Mining Information Systems, Mining Enforcement and Safety Administration, February, 1977.

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efforts made by the sand and gravel industry in close working harmony with the enforcement officers of MESA.

Proponents of this legislation argue that by placing the responsibility for enforcing mine safety and health in the Department of Labor, miners will receive better protection. The record of safety improvement under MESA does not substantiate the claim that another agency would provide better protection. As noted above, the sand and gravel industry is making progress improving its safety record.

In today's economy a sand and gravel operator cannot financially afford accidents. It pays to provide a safe and healthful working environment.

Our industry believes that the present law is achieving what the Congress wanted when it passed the Federal Metal and Nonmetallic Mine Safety Act in 1966. There already has been substantial improvement in our industry, and I am convinced that there will be continued improvement. We strongly urge the Committee not to change the present safety law which applies to our industry in light of the positive progress which has and is continuing to be made.

MESA has done an outstanding job of educating both management and employees on new developments in safety. We appreciate that similar provisions are provided in S. 717, but we feel that there will be a loss of momentum if that function is transferred to another federal department.

It has been alleged that the Federal Metal and Nonmetallic Mine Safety Act does not provide for the immediate protection of employees when unsafe working conditions are discovered. This is simply not true and we cite as documentation the 1974 Report to Congress on the Enforcement of the Federal

Metal and Nonmetallic Mine Safety Act. That report cites a large number of operations which were closed or partially closed by MESA for safety violations. MESA inspectors are aggressively enforcing the standards.

The sand and gravel industry supports the Memorandum of Understanding which was signed by both the Department of the Interior and the Department of Labor concerning the respective jurisdictions of MESA and OSHA. The Memorandum clearly sets forth the responsibility of each and, form our point of view, identifies clearly which agencies' safety regulations applied to the various parts of our operations.

We have stated our belief that the transfer of mine safety enforcement responsibility will not improve safety conditions in the mining industry, but rather will disrupt already successful procedures or programs which have been brought about by the effective mutual effort of MESA and the mining industry, working in harmony toward a common objective. In addition to the basic problem posed by the proposed transfer of jurisdiction from MESA, there are fundamental defects with certain specific requirements of S. 717:

1. The definition of "mine" in S. 717 is broader in scope than the current Federal Metal and Nonmetallic Mine Safety Act definition. We support a further expansion of the definition to provide one federal government agency with the safety enforcement authority for a mine and all facilities located on the property controlled by the mine operator. This would further eliminate duplication and confusion such as that which necessitated the Memorandum of Understanding. Further it will provide substantial cost savings for the Federal Government in that only one agency need concern itself with a specific geographic location. Additionally, and

perhaps more important, the mine operator and his employees will benefit through dealing with only one agency rather than several different agencies.

2. As noted earlier, there are more than 7,000 separate sand and gravel operations. The requirement contained in S. 717 to inspect each of those operations four times a year results in a total of more than 28,000 inspections annually for the sand and gravel industry alone. Conditions in sand and gravel operations do not change drastically and certainly do not warrant four inspections a year. Because sand and gravel operations do not change frequently, the requirement contained in the present Act for an annual inspection is sufficient. The requirement for 28,000 inspections and the accompanying reports will not contribute to safety at sand and gravel operations. This requirement alone would require a substantial addition to the present inspection force. The conditions and circumstances surrounding sand and gravel operations do not justify this significant increase in inspections or federal government expense.

3. S. 717 would require each sand and gravel operator to provide new employees with 24 hours of safety training and would require all employees to receive 8 hours of safety training annually. This mandatory training requirement may pose serious economic hardships on small sand and gravel producers. The vast majority of the 7,000 operations employ less than ten people, and the training requirement could force them to close their operations during the training periods. We believe that the requirements contained in the present regulations for each operator to have a continuing safety program are sufficient. There is also serious question concerning the quality of training which would be available through the

small mine operators since, in all likelihood, they do not have any training expertise for such a formal program.

4. S. 717 contains a General Duty Clause which requires the mine operator to furnish each miner a place of employment "free from recognized hazards." This "General Duty Clause" essentially allows a determination to be made at the inspection level as to what a health or safety standard should be. The clause threatens the uniform enforcement of the Act on mine operators. That uniformity of enforcement is essential if there is to be fair and equal treatment to the many different mining operations. The term "recognized hazard" is vague and promotes further nonuniform enforcement. All of the known hazards associated with mining are covered by very specific regulations. There is no necessity for including a "General Duty Clause" which will be to the detriment of the mining industry and enforcement agency.

5. The proposed law sets forth a new procedure for the adoption of standards. We strongly believe that the continued addition of various timetables for promulgating standards under the numerous federal acts with which each employer must comply, is confusing and detrimental to the purposes of the Acts. The procedures set forth in S. 717, in actual practice, may interfere with due process. We would suggest, as an alternative, that the procedures outlined in the Administrative Procedures Act be followed rather than introduce a new timetable for standards promulgation in this legislation. The Administrative Procedures Act has long been recognized to provide an adequate hearing for all parties.

6. The provision in S. 717 for a variance is unclear and, as

presently written, appears to be impractical. Each mine is unique and a workable provision for a variance procedure must be incorporated in any new legislation. We agree that any variance which is granted must provide at least the equivalent safety protection as required by the standard from which the variance is granted. We strongly urge the Committee to use the language of the Federal Metal and Nonmetallic Mine Safety Act with respect to variances.

7. One of the strong points of the current Act is the requirement for the Secretary to appoint an advisory committee. This allows both mine operators and employees the opportunity to make meaningful suggestions and to participate in the standards' writing process. S. 717 provides that the Secretary may appoint advisory committees, but does not require him to do so. We strongly urge that the language be amended to require the appointment of advisory committees which results in better standards and a stronger rule making process.

8. President Carter has promised to reduce the reporting and record keeping requirements currently imposed upon small businessmen. Sand and gravel producers are small businessmen who do not have large staffs capable of completing complicated federal reporting forms. Under the Federal Metal and Nonmetallic Mine Safety Act the industry is already required to submit timely reports and keep accurate and complete records. This system has proven very satisfactory. We believe that it is not necessary to change the present record keeping system and feel that the proposed requirements of S. 717 will impose a whole new system which will be confusing and far more complex than necessary. The Committee

should give serious consideration to continuing the present system of records and reports rather than creating a new one.

9. The Federal Metal and Nonmetallic Mine Safety Act does not require that a representative of the employees accompany an inspector while visiting a mine operation. The system used by MESA of consulting with the miners has been highly satisfactory and worked very well. We can see no reason why the present requirements should be changed and must strongly object to the mine operator being required to pay an employee for accompanying an inspector. As noted earlier, sand and gravel operations are small and the loss of a production employee for the purpose of accompanying an inspector may cause serious economic hardship to small sand and gravel operations. This is particularly true when coupled with the requirement for four inspections annually.

10. S. 717 mandates monetary penalties for each violation, no matter what that violation's impact is on the safe working environment of our employees. Monetary penalties are not necessary when you consider the two provisions already contained in the Federal Metal and Nonmetallic Mine Safety Act which impose a greater penalty on the operator than would the assessment of a fine. The Secretary or his representative have the power in the current Act to issue an order withdrawing employees from an area considered to be unsafe, thus stopping production. Additionally, the current statute provides specific judicial procedures for cases of flagrant standards violations. These two powers are sufficient and do not need to be supplemented through the assessment of monetary fines. The proposed legislation goes far beyond any other federal safety statute in

that there is no discretion concerning whether to assess a penalty. Minor safety violations, which are subject to individual inspector's interpretation must be assessed a penalty under S. 717. Monetary penalties tend to place the mine operator in an adversary relationship with the inspector rather than create a spirit of cooperation which results in a safer working environment. Proof of the effectiveness of the current system is easily demonstrated through the significant improvement in safety records.

11. The whole section of S. 717 dealing with "Entitlement of Miners" is unfair to the small businessman who works very hard to provide a safe place to work for his employees. It will force small businesses out of existance through unfair and uncalled for payments to unproducing employees. This section alone will lead to exorbitant litigation costs, which will impact directly upon the costs of producing this country's most valuable assets, its natural resources.

12. The current Federal Metal and Nonmetallic Mine Safety Act explicitly sets forth the requirements for individuals who are inspectors. Those requirements were specifically included in the original legislation in recognition of the uniqueness of the country's mines and their related operations. S. 717 waters down the requirememt concerning the quality of the inspectors and works at cross purposes to the whole intention of the Act. The qualifications for the inspection force must not be reduced if we are to continue to improve the operating condition of this country's mines. Sand and gravel operators have a high degree of respect for the quality of MESA's inspection force and anything which would reduce that quality is not in the best interest of a safe working environment for our

employees. Reducing the qualifications for inspectors reduces the necessary knowledge for an effective inspection force and works against a mutual understanding between the inspector, the mine operator and the mine employees.

Let me emphasize that we feel the changes proposed by S. 717 are not necessary. The present Federal Metal and Nonmetallic Mine Safety Act is working for the benefit of the nation's miners and does not need amendment.

We appreciate the opportunity to present our views to the Committee on this legislation.

STATEMENT OF THE

NATIONAL LIMESTONE INSTITUTE

ON S. 717

The National Limestone Institute represents some 600 limestone producers in 33 states who are responsible for a great majority of the crushed stone produced in the United States. In fact, limestone represents the bulk of crushed stone types, and in 1975 accounted for nearly 74% of all crushed stone produced in the United States.

Mr. Chairman, I would like to begin this statement by addressing what we feel is the central issue of S. 717. That, of course, is the transfer of the Mining Enforcement and Safety Administration from the Department of Interior to the Department of Labor. Following the discussion of the transfer issue, we would then like to comment, specifically, on several other provisions of the bill.

We realize that some labor leaders are pushing very hard for the transfer of MESA. We have listened to their arguments in support of this transfer and it all boils down to their charges that as long as MESA is within the Department of Interior, there exists an inherent conflict of interest. In his statement before this Subcommittee last year, John S. Johns, Vice-President of the United Steel Workers, said: "MESA remains under the direction of an Assistant Secretary of Interior who has many other duties including the direction of Bureau of Mines which are contradictory with MESA's role." While we do not agree with Mr. Johns' assessment that the role of MESA and the Bureau of Mines are contradictory, we see a much simpler and less disruptive solution to the problem he claims exists, and that would be for the Congress to create within the Department of Interior a position of Assistant Secretary for Mine Health & Safety. The responsibilities of this new position could be defined by the Congress and, of course, the filling of this position would be subject to the advice and consent of the Senate. If this were done, I suppose there would still be those who would argue that the mere fact MESA is in the Department of Interior puts it at cross-purposes with Interior's responsibility of encouraging mineral production. Yet this very bill would continue the operation of the National Mine Safety and Health Academy within the Department of Interior. We think this is being done because of the expertise in residence at the Interior Department — and I might add, we agree. But if we are being asked to follow the logic of this bill's proponents, we fail to see why the Academy stays and everything else is transferred.' To say on one hand that Interior has the expertise for training inspectors and then on the other to say that they are not competent to administer MESA does not make good sense.

We think the conflict of interest arguments are contrived, unsupported by fact and contrary to common sense. In 1976, before the House Subcommittee, then Secretary of Interior Thomas Kleppe said: "The argument that Interior's broad responsibility for mineral resources, including the encouragement of mineral production, impairs

its ability to operate effectively in mine health and safety is not valid. Rather, it is precisely because of the broad technical expertise this responsibility has produced that mine health and safety programs could not be administered as effectively in another department." We concur with Mr. Kleppe's statement and think that the proposed transfer is an unwise reaction to the occurrence of accidents in the mining industry. As long as there is a mining industry, there will be accidents. This can also be said of every other industry. We do, however, subscribe to the philosophy that the number of accidents must be kept as low as possible, and in this area we are making significant progress. In the limestone industry — and I'm talking about underground mines and surface mines and mills — during the last five years, there has been a dramatic decrease in the accident frequency rates. (Frequency rates are per million man hours worked.) The frequency rate for fatal accidents in 1972 was 0.43 and in 1976 that rate was 0.33. For nonfatal accidents in 1972, the rate was 25.86 and in 1976, it was 17.97. For all disabling injuries the frequency rate in 1972 was 26.29. That same figure for 1976 was 18.30. As far as we know, the accident frequency rates for the limestone industry have never been lower, and we intend to continue reducing them.

Mr. Chairman, I cannot leave the issue of transferring MESA to the Labor Department without commenting on one of the underlying fears our industry harbors. We are afraid that if MESA is transferred to the Labor Department it will become subject to the same type of mismanagement which has caused OSHA to become despised by American businessmen and the general public as well. The philosophy behind the creation of the Occupational Health and Safety Administration cannot be argued. However, the accomplishments of that agency can be. According to a recent article by Peter Milius in the Washington Post entitled "OSHA: A Four Letter Word", the author points out that there are 22,000 toxic substances in use in American industry, many of them deadly — and in six years of existence, the Occupational Safety and Health Administration has published full-scale regulations limiting worker exposure to precisely 17 of them. Elsewhere in the article, the author points out that 13 of the 17 regulations the agency did issue came only after labor unions filed suit to force the government to act. The article also says that this same Federal safety agency has 12 entire pages on regulations in force on the proper construction of portable wood ladders, including a paragraph on knots. We're not questioning the importance of a good knot, we are questioning OSHA's priorities. Of OSHA, Mr. Milius says, "Not so good on industrial poisoning, but dynamite on rickety ladders — that is as good an introduction as any to OSHA." The point is Mr. Chairman, that MESA is doing a good job; they are reducing injuries and deaths; and the simple transferrance of that agency to the Labor Department is not likely to enhance their efforts.

Now, Mr. Chairman, I would like to address some comments to other provisions of the bill.

Sec. 101 - This section spells out in detail the duties and responsibilities of the mine operator as well as the miner. While the bill, in sections we will discuss later, goes into great detail establishing a structure of fines and other penalties to be used against the operator, there is but one small paragraph in the bill which would impose an economic sanction on a miner who fails to comply with the act.

Either you are serious about the miners' responsibility under the act, or you are not. If your definition of being serious is levying steep fines, as you have provided for in the case of the operator, then you should do the same in the case of the miner; because if you think it is necessary to be punitive in order to force people into compliance — and I might add we do not, and think that this is one of the major misconceptions of this bill — then you should eliminate Section 101.(b) because there are no provisions except one for punishing the miner.

Sec. 102.(a)(2) - This provision provides that the Secretary shall afford interested persons a period of thirty days after publication of a proposed rule to submit written data or comments. We feel strongly that thirty days is too short a period. Our members rely on their association to keep them informed. Our usual response to a proposed rulemaking which affects our industry is to send it to the membership for comment. Upon receipt of their comments, they are consolidated and a determination is made as to whether a committee meeting is necessary. If a meeting is held, the proposal is again reviewed and a response prepared. All this is next to impossible to accomplish in a period of thirty days. The period for comment should be extended to sixty days.

Sec. 102.(a)(6) - This section provides that the results of physical examinations and tests shall be furnished only to the Secretary or the Secretary of Health, Education and Welfare and, at the request of the miner, to his designated physician. It is not clear if the operator will also be furnished with this information, even though he must pay for it. We think it is important to the health and safety of his employees that he have it.

This section also states that a miner shall be reassigned if a determination is made that he may suffer material impairment of health or functional capacity by reason of exposure to toxic materials. This section goes on to say any miner so transferred shall continue to receive compensation for such work at not less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. The rate of compensation a transferred miner receives should be a part of the collective bargaining process and does not belong in a bill dealing with safety. We do not think it should be this committee's responsibility to tell the operator what he should pay his employees. We also think that this provision could give rise to hard feelings among other miners who are being compensated at a lower rate than the transferred miner although they may be doing identical work.

Sec. 102.(d)(1) - This section describes the procedure for the granting of a temporary order permitting limited noncompliance with a standard. The section states that "Such a temporary order may be granted only after notice to employees and an opportunity for a public hearing: Provided, that the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing or for sixty days, whichever is less ..." If a hearing is not called or completed within sixty days, the operator would be penalized because of events completely beyond his ability to influence. The section should read, "...until a decision is made on the basis of a hearing."

Sec. 104. (a)(2) - This section requires that the Secretary inspect all mines at least four times a year. In 1975, witnesses from the Labor Department and the Interior Department recommended that the number of inspections be left to the discretion of the Secretary, thus enabling him to make more efficient use of his personnel. We support that recommendation. With respect to the prohibition against advance notice, we think that the Secretary should be given discretion in this area as in some cases it is important for the operator or inspector to have appropriate personnel available for assistance during the inspection. The Occupational Safety and Health Act provides that: "Any person who gives advance notice of any inspection to be conducted under this act, without authority from the Secretary or his designees, shall upon conviction be punished by a fine of not more than $1,000 or by imprisonment for not more than six months or by both". We can think of no reason why this same flexibility should not apply in the case of this bill.

Sec. 104. (f)(1) provides that any miner or representatives of miners may request an inspection if he believes that a violation of a safety or health standard exists which may cause injury by giving written notice to the Secretary. We do not object to this, but think that the employees' first responsibility is to notify the operator so that the situation can be corrected without delay; thus preventing possible injury to other miners. As we tried to point out earlier, safety cannot exist without cooperation between the operator and his employees. I, for one, would not want an employee working for me who would have such a callous disregard for human life that he would allow a dangerous condition to exist for a period of several days, which is the time it would take for him to compose and mail a letter, without informing the mine operator. This provision of the bill encourages that type of behavior.

Sec. 105. (e)(2) provides that if a miner is withdrawn because he has not received the training required by the act that he shall continue to be compensated until he has received such training. We would like to know if the operator will have the ability to terminate an employee if he does not respond to training.

Sec. 106. (c)(3) requires that the employee who is found to have been discharged by an operator because of discrimination shall have his attorney's fees and court costs paid by the operator if the employee's charges of discrimination are sustained. This section again points out the double standard inherent in this bill for there is no similar provision which would provide for the same compensation for the operator should his termination of the employee be sustained.

Sec. 111 provides for the assessment of fines. We believe that fines are unnecessary except in extreme cases, and should be left to the discretion of the Secretary except those cases involving criminal action where the criminal justice system provides adequate protection. We think the best way to improve the industry's safety record is through the education and training of all mining personnel. We realize that inspections are important and necessary in order to locate and identify both potential and existing hazards, but we cannot allow ourselves to become

dependent upon them as a panacea. A previous Secretary of the Interior addressed this issue in an annual report to Congress when he said: "MESA is under no illusion that the act of inspecting and enforcing mine health and safety standards will, of itself, produce a radical decline in mine accidents and disabling injuries." The legislation before this committee and in particular, the section on penalties, in our opinion, takes the opposite approach and is punitive in nature rather than remedial. We would like to see more emphasis placed on helping the miner and the operator recognize and correct existing and potentially hazardous situations. This is best achieved by a common openness and trust between operators and inspectors.

It is important to realize that the great majority of crushed stone operations are small businesses. Over 72% of all quarries have an annual production of less than 200,000 tons. Very rarely would a quarry of this size employ more than 10 to 12 people. I might add that the 72% represents about 3,486 quarries out of a total of 4,808 in the Nation. Further, 33% of all quarries operating had an annual production of less than 25,000 tons. This represents 1,600 quarries, each of which would employ two or three individual workers. These quarries are generally referred to as "mom and pop" operations and, as one might expect, there is an inverse relationship between the number of employees and the injury frequency rate. For example, the injury frequency rate for all disabling injuries for the period January-September, 1976, at surface mining operations employing between five and nine people, was 16.81. During the same period for operations employing 250 or more, the rate was 7.51. These smaller operations have neither the capability nor the resources to independently implement the type of training programs necessary to significantly reduce their frequency rates. Sanctions in the form of mandatory fines and other penalties will do little in terms of better equipping these operators and miners to deal with safety problems and could very well force some out of business.

Sec. 112 provides that "If a mine or area of a mine is closed by an order issued under Sec. 104, Sec. 105, or Sec. 108 of this title, all miners working during the shift when such order was issued who are idled by such order, shall be entitled, regardless of the result of any review of such order to full compensation by the operator at their regular rates of pay for the period they are idle, but not more than the balance of such shift." This section goes on to provide for full compensation for a period of up to one week if the mine is closed by an order issued under Sec. 108 or 105 for the failure of the operator to comply with any health or safety standard.

We find this section particularly offensive and agree with the testimony presented by the Department of Labor witnesses in 1975, which labelled it as "unwise and unhealthy". The Department of Labor in their testimony also stated that such compensation should be a part of the bargaining process between labor and management. Here, again, we concur with their testimony.

Sec. 116 provides for Mandatory Safety Training. We question the feasibility of this section, particularly as it relates to operations where only a few miners are

employed. We think that MESA's time and energies would be much better spent helping these individuals deal with their safety problems instead of being preoccupied with writing citations and collecting fines.

With respect to paragraph 2 of Sec. 116 (a), we don't understand the reasoning behind the requirement that miners working on the surface receive training with self-rescuer and respiratory devices. Certainly these individuals would never have need for using one of these devices in a surface operation, and if this requirement remains in the bill, we will no doubt see, soon after its passage, a proposed rulemaking requiring that all surface mine workers be equipped with such devices. This requirement is unnecessary and should be removed from the bill.

Mr. Chairman, that concludes our remarks on this bill but I would like to add that we at NLI stand ready to provide any assistance you may desire of us.

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The CHAIRMAN. That concludes our hearings.
[Whereupon, at 12:40 p.m., the subcommittee was recessed.]

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