

**Testimony of
Michael J. Wright
Director of Health, Safety and Environment
United Steelworkers
before the
House Committee on Education and the Workforce
Subcommittee on Workforce Protections
on
Protecting America's Workers: Reviewing Mine Safety Policies with Stakeholders**

**October 21, 2015
Washington, D.C.**

Chairman Walberg, Ranking Member Wilson, distinguished members of the Subcommittee, thank you for the opportunity to testify this morning. My name is Mike Wright. I'm the Director of Health, Safety and Environment for the United Steelworkers. Our union represents 850,000 workers in the United States and Canada in steel, aluminum, other metals, forestry, paper, rubber, chemicals, oil and gas, general manufacturing and services. We are the largest manufacturing and extractive union in North America. We have members in every U.S. State and every Canadian Province and Territory. For the purposes of this hearing, we represent the majority of unionized metal and non-metal miners in the U.S. and Canada, in commodities including iron ore, copper, precious metals, trona, potash, limestone, marble, sand and gravel. We also represent workers in mineral processing facilities under MSHA's jurisdiction, such as alumina refineries and cement plants. All together, we represent more than 15,000 miners in the United States and 18,000 in Canada. I've never worked as a miner, and do not consider myself to be one, but I'm up-to-date on my MSHA Part 48 training, and I've done safety and health work in several dozen mines in the United States, Canada, Poland and Russia. I am also a member of NIOSH's Mine Safety and Health Research Advisory Committee.

MSHA's Impact

The breadth of our industries and the political jurisdictions in which we work forces me and my colleagues to be generalists. That can be a problem when dealing with highly technical issues specific to a particular operation. But it allows us to bring insights from one industry or jurisdiction to another industry or jurisdiction. And one such insight is this: the U.S. Mine Safety and Health Administration is one of the very best occupational safety and health regulatory and enforcement agencies in North America. Over the years we've had our differences with some MSHA policies and some enforcement actions – or lack of enforcement actions – but the overall impact of the

agency has been enormous. In 1977, the year the Mine Act was passed, 273 American miners lost their lives in mining accidents. In 2014, the number was 45. Some of the decrease can be attributed to a decline in mining employment, but even if we control for employment, the death rate from traumatic injury in our nation's mines has dropped by 77%. And that number does not include the miners saved from lingering deaths from diseases like black lung and silicosis.

Of course, MSHA was not the sole cause of the decline. Technological changes, mine safety research, mine operators themselves, and mining unions all played a part. But MSHA was the driving force, the most important instrument of change. Corporate safety directors have often told me and my colleagues, usually in private, that without MSHA – or for that matter OSHA – they wouldn't have a job and their company wouldn't have much of a safety program. Without MSHA we probably wouldn't have self-contained self-rescuers or refuge chambers; there would be less rock-dusting and more explosions in coal mines; less machine guarding and more amputations in surface metal mines; less dust control and more silicosis in sand mines and granite quarries. Over the 37 years of its existence this Agency has literally saved the lives of thousands of American workers.

No Backward Steps

Even so, there is plenty of room for improvement. The forty-five families of miners killed last year, and the 25 families of miners killed so far this year, can attest to that. Let me offer a few suggestions for improving mine safety and health.

Most importantly, there must be no backward steps. Every year there are proposals to exempt a particular group of mines from some set of legal requirements, or to cut back on inspections or penalties, or to shift MSHA's resources away from enforcement toward voluntary programs. But all the standards are meant to save lives. A safe mine should not fear an inspection, and the proper way to avoid penalties is to avoid violations.

For example, there is a recent proposal to establish a "Pattern of Compliance" program that is the inverse of MSHA's highly successful Pattern of Violations program. Mines with good safety records would then be exempt from some MSHA requirements. The problem is determining that a mine is truly safe and stays that way. Our union has some sad experience with this issue. On April 9, 1992 the Westray Coal Mine in Nova Scotia won the prestigious John T. Ryan award given annually to the Canadian coal mine with the fewest injuries. Exactly one month later a methane and coal dust explosion killed all 26 miners underground at the time. We had an active organizing campaign at the mine when it exploded. Although it never reopened, we continued to represent the families and the remaining miners through the long years of inquests and hearings.

Other proposals would disallow MSHA citations for first violations in some mines, giving those mine operators a free pass to violate the law until caught. Miners of course, get no such free pass and do not spring magically back to life the first time they are killed, like in some video game.

Others would give more weight to voluntary compliance. We are all for voluntary compliance. But the problem with voluntary compliance is that not everyone volunteers.

In fact, there is no real conflict between strong enforcement. Enforcement stimulates voluntary compliance; reduce enforcement, and you will reduce voluntary efforts.

Mine Safety and Health Programs

What about forward steps? Let me suggest some. MSHA enforcement is based on a rulebook of mandatory standards. Those standards are necessary, but no effective corporate safety program relies on passive compliance with a rulebook. Instead, good programs actively seek out and correct workplace hazards. MSHA began preliminary work on a Safety and Health Programs standard six years ago, but it has languished. No new regulation or initiative would have a greater positive impact on mine safety and health.

Let me add that the USW is surveying the effectiveness of current safety and health programs in our 138 U.S. mines under a grant from the Alpha Foundation for the Improvement of Mine Safety and Health, which was funded by the settlement agreement in the Upper Big Branch case. We should have a lot more to say on this issue in about a year.

Miner Training

Second, MSHA should take a careful look at the effectiveness of its current Part 46 and Part 48 training programs. The problem is not so much the length of the training, but its content and especially the methodology. I was lucky enough to receive competent initial and refresher Part 48 training through the Penn State Mining Program, but I've talked to dozens of miners who think their training was worthless. That is especially true of the refresher training, which too often consists of bored miners watching PowerPoints or videos from equally bored instructors, without any real interaction or any discussion of the safety problems they actually encounter on the job. The USW has a large occupational safety and health training program administered by our Tony Mazzocchi Center. Last year our training programs included almost 20,000 workers and managers, mostly under OSHA's jurisdiction. We know a lot about effective adult education. Training is critical to mine safety and health, but the content has to be appropriate to the mine and the teaching methods have to be effective for adult learners. A full-scale review by MSHA, including outside experts in adult

education, could lead to new guidance, regulation if necessary, and in the end to better trained miners.

OSHA-MSHA Collaboration

Third, there needs to be stronger collaboration between OSHA and MSHA. The agencies should work together in both standards and enforcement. For example, OSHA has a strong standard protecting hazardous waste workers, the “Hazwoper” Standard (Hazardous Waste Operations and Emergency Response, 29 CFR 1910.120). Cement plants fall under MSHA’s jurisdiction; cement kilns are sometimes used to incinerate hazardous waste, but the Hazwoper Standard does not apply. MSHA and OSHA could have addressed the issue jointly, but they did not.

An even more egregious example is Hazard Communication, the standard that requires labeling and safety data sheets for workplace chemicals. OSHA adopted its standard in 1984. It took MSHA 18 more years, although the two rules are virtually identical.

The recent situation is better. Joe Main at MSHA and David Michaels at OSHA often share information and ideas, and the two agencies are collaborating to a degree on silica, which is a serious concern for both. But much of that is based on a working relationship between the two Assistant Secretaries, and there is no guarantee that it will survive their leaving office. The collaboration should be institutionalized.

Reforming the Mine Act

Let me turn to what Congress could do. The Mine Act is a good law, but it has some key flaws.

- MSHA lacks subpoena authority to conduct inspections and investigations. This defect in the Mine Act has serious consequences. MSHA cannot compel the production or records other than those specifically required by the Act; it cannot compel witnesses to testify or be deposed or even to appear for questioning. In the MSHA’s investigation of the 2010 Upper Big Branch disaster, MSHA had to work through the West Virginia mine safety agency, which does have subpoena power, to complete its investigation. Many states do not have mine safety agencies with subpoena power, including Nevada and Wyoming, both of which have substantial mining populations. In contrast, both the OSH Act and the Fair Labor Standards Act provide the Labor Department with the subpoena authority that MSHA lacks. In fact, even laws like the Popcorn Promotion, Research and Consumer Information Act include subpoena authority. It is outrageous that an agency whose mission is promoting popcorn has more authority than one charged with protecting miners from serious injury or death

- MSHA has \$72 million in uncollected fines, representing between 10% and 25% of MSHA penalties. The U.S Attorney is authorized to sue scofflaws in federal court, but does so infrequently. Even where a lawsuit is filed, an operator can and frequently does shut down and reopen under a new name. This is fundamentally unfair to mine operators who play by the rules. MSHA needs the legislative authority to issue a withdrawal order if an operator does pay the fine or at least enter into a payment plan in a reasonable time.
- Criminal penalties are an important deterrent to criminal behavior, and the Mine Act includes criminal penalties for knowing and willful violations of mine safety standards that cause the death of a miner. However that crime is only a misdemeanor, with a maximum penalty of one year in prison or a \$250,000 fine. In a sentencing hearing for criminal violations that led to the death of six miners and three rescuers in the 2007 Crandall Canyon disaster, the federal judge expressed his outrage at “the miniscule amount provided by the criminal statute in this matter.” In contrast, making a false statement under the Mine Act is punishable by five years in prison. Many environmental statutes provide for penalties of five years or greater. For example, five years is the penalty for damaging a coral reef or for “harassing a wild burro on federal land.” What message does it send when the federal government values the serenity of a burro over the life of a miner?

These problems and others would be corrected by H.R. 1926, The Robert C. Byrd Mine Safety Protection Act of 2015, introduced by Representative Bobby Scott, the Ranking Member of the full Committee, and cosponsored by Ranking Member Wilson and many of the members of this Subcommittee. That bill would greatly improve the safety and health of our nation’s miners. We urge its passage.

Chairman Walberg, Ranking Member Wilson, thank you again for the opportunity to testify this morning.