

SENATE ENVIRONMENTAL RESOURCES  
and ENERGY COMMITTEE

PUBLIC HEARING ON MINE SAFETY

Before: SENATOR MARY JO WHITE, Chairman  
SENATOR RICHARD KASUNIC  
SENATOR RAPHAEL MUSTO  
SENATOR JAMES J. RHOADES  
SENATOR J. BARRY STOUT  
SENATOR DONALD WHITE

Staff : Patrick Henderson, Executive Director  
Richard Fox, Executive Director

Date : January 31, 2006, 9:00 a.m.

Place : Room 8E-A, East Wing  
Capitol Building  
Harrisburg, Pennsylvania

By : Susan L. Petriella,  
Registered Professional Reporter

2

I N D E X

Speakers	Page
Chairman's Welcome and Opening Remarks	3
Opening Comments by Senator Kasunic	4
Pennsylvania Department of Environmental Protection Secretary Kathleen A. McGinty	10
The Honorable David E. Hess Former Secretary of Environmental Protection	45
United Mine Workers of America Edward D. Yankovich, International District Vice-President	58
PA Coal Association George Ellis, President	80

1                   SENATOR MARY JO WHITE: This is the hearing  
2 of the Senate Environmental Resources and Energy  
3 Committee. We are here specifically to discuss the  
4 issue of mine safety in the context of changes that  
5 are being proposed to Pennsylvania's law. These are  
6 principally contained in Senate Bill 949, which has  
7 been introduced by Senator Kasunic. I understand  
8 considerable work has gone into this effort by the  
9 Department of Environmental Protection and others for  
10 which we thank you.

11                   It's a very lengthy bill, over 200 pages in  
12 length. And I thank Patrick for preparing a summary  
13 that I read, which is still lengthy. It amends the  
14 Act of 1961, so it has been quite some time since  
15 Pennsylvania has done a thorough overhaul of our  
16 mining regulations.

17                   Obviously, this was spurred to a large  
18 extent by the Quecreek incident of 2002, which ended  
19 very well for Pennsylvania. Recent events in West  
20 Virginia were not quite as -- not at all as beneficial  
21 in their outcome. So it is timely that we have  
22 completed this work and are ready to review it today.

23                   Senator Kasunic, as the sponsor of the  
24 bill, would you like to make an opening comment,  
25 Senator?

1                   SENATOR KASUNIC: Thank you, Madam  
2 Chairwoman, for holding this public meeting and to the  
3 members of the committee here, thank you very much for  
4 the opportunity to be here to discuss this very  
5 important issue, and that's safety in our bituminous  
6 coal mines, with the near tragedy that took place  
7 three and a half years ago at Quecreek. And we here  
8 in Pennsylvania were very fortunate that those men,  
9 nine miners, were saved and came out alive.

10                   It was a lot of hard work and effort on  
11 behalf of a lot of people, particularly our own  
12 Department of Environmental Protection, our own  
13 governor, Governor Schweiker, David Hess, who was the  
14 secretary at the time, Joseph Scaffoni, because of  
15 yeoman's tack that they undertook there and were able  
16 to get those men out of the mines safely.

17                   But what has happened is in recent times,  
18 as you know here, three to four weeks ago, we had a  
19 tragedy in West Virginia where because of an explosion  
20 in the mine 12 miners died. A few weeks after that,  
21 two more miners died because of a belt fire that took  
22 place there and the tragedies that took place in West  
23 Virginia and also what happened in Quecreek is I think  
24 what brought this to the forefront and certainly makes  
25 this a priority in terms of the piece of legislation

1 that is long overdue and needs to be addressed here in  
2 the Commonwealth of Pennsylvania.

3                   Just Sunday, we witnessed that effective  
4 mine safety measures do save lives. A fire broke out  
5 in a mine in Saskatchewan, Canada and forced 72 miners  
6 to seek shelter in a refuge room stocked with oxygen  
7 and supplies. Yesterday, all 72 miners were brought  
8 out of that mine alive and healthy.

9                   The intent of Senate Bill 949 is to help to  
10 prevent another Quecreek, another Sago from happening  
11 here in the Commonwealth of Pennsylvania. Requiring  
12 reasonable precautions, giving regulators more

13 oversight and increasing the fines for violators will  
14 go a long way in making our mines a safe place for our  
15 coal miners to earn their living in the bowels of the  
16 earth.

17 In an effort to increase safety, Senate  
18 Bill 74-- Sorry, in an effort to increase safety,  
19 Senate Bill 949 incorporates key recognition from the  
20 Governor's Commission on Abandoned Mine Voids and  
21 Safety. This was formed by Governor Schweiker  
22 immediately after the Quecreek accident.

23 Also, there was a grand jury investigation  
24 that took place there, so the recommendations from  
25 these two panels, along with a lot of work and input

6

1 from our regulatory arm, DEP, and also talks with the  
2 United Mine Workers of America and the Coal Operators  
3 of Pennsylvania have helped developed and craft this  
4 piece of legislation.

5 Many changes, many changes have taken place  
6 since 1961 in the mining industry. Unfortunately, our  
7 laws have not kept pace with this technology. For  
8 example, we're still talking about how to protect  
9 animals, such as mules and horses, in our coal mines  
10 and how to care for the stables. This goes back to a  
11 time in our history that we're not very proud of when  
12 animals actually were more important to the industry  
13 than human beings were.

14 This bill represents the first major  
15 rewrite of this law since 1961. As you mentioned  
16 earlier, Madam Chairwoman, that many, many changes  
17 have taken place and it's time that we address this  
18 and address the new technology and the different  
19 methods of mining. It contains some long overdue  
20 provisions that may help prevent future mining  
21 disasters and death.

22 I'm proud to say that this measure  
23 incorporates some great ideas offered by a host of  
24 good people, who put a great deal of time and effort  
25 into this proposal. We also have a companion bill in

1 the House of Representatives, and I would be remiss if  
2 I didn't mention my good friend from Somerset County,  
3 Bob Bastian, who has a companion bill in the Senate.  
4 Working together, working together, I realize that  
5 this could continue to be a work in progress, because  
6 there are additional things probably that need to be  
7 addressed and need to be done here. But in the spirit  
8 of cooperation, I would hope that we don't spend a lot  
9 of time in terms of months and weeks and perhaps even  
10 years in continuing to develop new language.

11 But I am here to tell you that I'm willing  
12 to work in the spirit of cooperation with the  
13 regulatory arm, with this committee, with the United  
14 Mine Workers of America, and with the coal operators  
15 to make what I feel is already a pretty good bill an  
16 even better bill.

17 So I look forward, Madam Chairwoman, to  
18 working with you and the committee. And I also have a  
19 few ideas myself in terms of adding two pieces of  
20 legislation or perhaps developing a new piece, which I  
21 have drafted. And that would deal with things such as  
22 safe rooms, handrails that would allow miners to  
23 advance out of a mine when they can't see because of  
24 smoke and dust and dirt. And even to the point of,  
25 you know, having additional oxygen supplies available

1 at strategic points throughout the mine.

2 And there are other technologies that we're  
3 hearing about, such as devices that miners can wear on  
4 their belt that they can be located anywhere in the  
5 mine and also communications technology that would be  
6 available, wireless communication technology that is  
7 available, and other things such as illuminated signs  
8 in order to allow people to find their way out of the  
9 mine in terms of directions and also showing exactly  
10 where the safe rooms are and where the oxygen supplies  
11 would be at.

12 So I'm sure we will probably maybe hear

13 that some of this can't be done, it's impossible to  
14 do, but I would look at those people in the eye and  
15 ask them, why can't we do these things? These are  
16 about human beings and about saving lives and that's  
17 what we're to do with.

18 If we fail to act on this piece of  
19 legislation, it would be a travesty to those men and  
20 women who over the years have lost their lives in  
21 mines and those who have been maimed and hurt in  
22 mines. So it's up to us as lawmakers to make sure and  
23 guarantee them, that they would have the safest  
24 possible workplace that we can give them and afford  
25 them.

9

1 By no means do I believe or do any of us  
2 believe that we will be totally free of accidents and  
3 tragedy in the coal fields. We know that will always  
4 happen. This is one of the most dangerous occupations  
5 in the world today, but it's up to us to make these  
6 mines safer. If we don't do anything, if we don't act  
7 on a piece of legislation soon, I'm here to tell you,  
8 you know, mines have been relatively safe the last few  
9 years, but the next tragedy in Pennsylvania here is  
10 just around the corner. I pray and hope that that  
11 would never happen, but the reality of it is that we  
12 will -- we will have another accident, we'll have  
13 another tragedy. And if we do nothing at all, the  
14 blood will be on our hands.

15 So I would ask that in honor of those men  
16 and women who have died and been hurt in the mines if  
17 we move this bill through the process as quickly as  
18 possible and get it on the governor's desk for his  
19 signature.

20 So with that, Madam Chairwoman, I will  
21 conclude, and certainly thank you for allowing me to  
22 participate in this hearing today. Thank you.

23 SENATOR MARY JO WHITE: Thank you, Senator.  
24 I assure you it is not the intent of this committee to  
25 delay the process. I would expect that we would be

1 able to report a bill out certainly within the next 30  
2 days.

3 SENATOR KASUNIC: And if I implied that,  
4 Madam Chairman, I apologize for that because I  
5 certainly didn't mean that, and I apologize to you and  
6 the committee.

7 SENATOR MARY JO WHITE: Senator Musto?

8 SENATOR MUSTO: No.

9 SENATOR MARY JO WHITE: With those opening  
10 comments, we will begin with Madam Kathleen A.  
11 McGinty, Secretary of the Department of Environmental  
12 Protection.

13 I would note that Commissioner Shane has  
14 graced us with his presence, also.

15 Good morning, Madam Secretary.

16 SECRETARY MCGINTY: Good morning, Madam  
17 Chair, members of the committee. Let me try that  
18 again. Good morning, Madam Chair, members of the  
19 committee. Thank you for your time and attention to  
20 this most critical of issues this morning.

21 I'd like to start on behalf of the governor  
22 by echoing some of the sentiments, Madam Chair, that  
23 you shared and, Senator Kasunic, in your remarks that  
24 had you shared and first and foremost to share our  
25 wishes, sympathies, prayers with the families in West

1 Virginia who have suffered this incomparable tragedy.  
2 And I think it is very fitting in the face of that  
3 tragedy that we gather to honor those memories and  
4 those who have worked hard so that that does not  
5 happen again anywhere and hopefully never again here  
6 in Pennsylvania.

7 I also think it is appropriate to reflect  
8 back on the real heroes who helped us to avoid a  
9 similar tragedy in Pennsylvania. Certainly to my good  
10 friend and predecessor, Secretary Hess, we all stand  
11 in his debt for his capable and effective leadership  
12 and service. Certainly, Governor Schweiker. But also

13 I do want to commend Joe Scaffoni, our other team  
14 members at DEP, that every day are putting their lives  
15 literally on the line. And I know that they serve  
16 with great pride, but it is also with great heroism.  
17 They are joined also by equally heroic local and  
18 federal dedicated staff, employees and leaders, and we  
19 all sit and stand in their debt with much gratitude.

20 Let me start with a couple of summary  
21 comments, first echoing again Senator Kasunic's  
22 remarks. Mining is an inherently dangerous  
23 profession. Having said that, it need not be unsafe.  
24 And the difference between something that is  
25 inherently dangerous and something which is unsafe is

12

1 the extent to which we ensure through law, through  
2 regulation, through policy and, frankly, through good  
3 relations and teamwork that a culture and an  
4 insistence on safety is built in those mines, around  
5 those mines and in mine operations across the  
6 Commonwealth.

7 Having said that, let me also start with a  
8 summary statement about where we find ourselves in the  
9 state of Pennsylvania as it relates to safety.  
10 Perhaps foreshadowing some of the sentiments the  
11 President will echo tonight traditionally in opening  
12 his State of the Union Speech and reflecting on the  
13 state of the United States, safety in Pennsylvania,  
14 the state of safety in Pennsylvania is strong. Having  
15 said that, as the President no doubt will say about  
16 the state of the nation, additional progress is  
17 absolutely called for both through regulation and  
18 importantly with the attention of this committee  
19 through legislation.

20 Let me start by giving you a report of what  
21 we have done post Quecreek and first and foremost to  
22 assure the members of this committee that every major  
23 recommendation made, whether by the Governor's  
24 Commission on Mine Safety, the U.S. Attorney, the  
25 State Attorney General, the various inspections and

1 reviews that were done following up on Quecreek, every  
2 one of those major recommendations has now been acted  
3 on. Many of them have not only been acted on, but  
4 through our administrative discretion have been  
5 instituted.

6 There are a core group of those  
7 recommendations, however, that can't be effectuated  
8 without legislative action. And many of those core  
9 recommendations are in Senator Kasunic's legislation  
10 that you are considering today.

11 Administratively, the actions that we have  
12 taken have addressed some of the key lessons learned  
13 in Quecreek. First, we have changed the permitting  
14 process so that the Bureau of Mine Safety has a key  
15 role in approving permits for new or expanding mine  
16 operations. That was not previously the case and  
17 further it is a role that needs to be executed by the  
18 Bureau of Mine Safety in a formal way with formal  
19 written recommendations on those permit applications.

20 Second, one of the crucial lessons from  
21 Quecreek was the inadequacy of our efforts or  
22 requirements with regard to mine maps. In that vein,  
23 we have first very substantially changed and improved  
24 the requirements that mine operators need to meet and  
25 demonstrate to show us that they have verified and

1 validated mine maps.

2 We also, with the support of this  
3 committee, have conducted an extensive outreach effort  
4 to call upon citizens across the Commonwealth and  
5 elsewhere to bring to our attention mine maps that may  
6 be in their possession, to collect, to centralize and  
7 importantly to digitize those maps so that they are  
8 available and accessible in conducting mining  
9 operations and in reviewing mine permit applications.  
10 We now have some 43,000 such maps that we are actively  
11 in the process of digitizing.

12 Having said that, you can appreciate with

13 300 years of mining in Pennsylvania, there is  
14 undoubtedly a treasure trove of additional mine maps  
15 to be found. And you also can appreciate that no  
16 matter how exacting we are in our requirements with  
17 regard to mine maps that the quality of those maps is  
18 going to vary, underscoring the need for us to  
19 redouble our efforts as much as humanly possible to  
20 have corroborating evidence of the accuracy and the  
21 validity of those maps wherever possible.

22 In addition to some of those administrative  
23 actions, I did want to highlight also, because we only  
24 can do this with the support of the legislature, the  
25 new and appreciable capital investments we have made

15

1 in enhancing mine safety. Specifically, we have  
2 invested \$415,000 in the last 18 months to purchase 48  
3 new self-contained breathing apparatus mechanisms as  
4 well as \$100,000 to replace and upgrade our vehicle  
5 mine safety and rescue equipment that we have.  
6 Shortly, we hope also to present to the legislature a  
7 request for an additional \$150,000 for another mine  
8 safety and rescue piece of vehicular equipment. We  
9 also have invested to increase training, some of which  
10 has been announced, some of which is in process of  
11 being developed.

12 Those are some of the administrative steps  
13 that we have taken that do address specifically the  
14 lessons learned from Quecreek. But I did want to  
15 underscore for the committee some of the things that  
16 we are not capable doing administratively and again  
17 that are a central feature of the legislation that  
18 Senator Kasunic has proposed. These recommendations  
19 also were echoed or derived from the Governor's  
20 Commission on Mine Safety and others who have looked  
21 at this issue.

22 First -- and this may come as a surprise to  
23 this committee -- our mine statute is very different  
24 from just about every other statute that you oversee  
25 our implementation of, and that we are charged with

1 implementing. First and foremost, unlike any of those  
2 other statutes, we are unable to hold the company that  
3 owns the mine responsible for meeting safety  
4 standards.

5 Second and related to that, again, unlike  
6 in any other situation, we are unable in the mining  
7 arena to issue any fines or penalties against a  
8 company that fails to meet safety standards. We also,  
9 third, again related to that original problem, are  
10 unable to take a company's compliance record into  
11 account in reviewing a proposed permit application.  
12 Therefore, our legislation that we have worked on and  
13 again that has been introduced with the leadership of  
14 Senator Kasunic and Representative Bastian takes that  
15 on, changes that situation, and brings the mining  
16 program more into sync with all the other statutes  
17 that we administer.

18 But there's one other key piece that I want  
19 to highlight in terms of critical aspects of this  
20 proposed legislation. In the mining program, we also  
21 do not have the ability to develop, to process, to  
22 issue regulations. Part of the reason that the law  
23 that governs mine safety in Pennsylvania still speaks  
24 to horses and mules is because we don't have the  
25 regulatory authority to develop new regulations that

1 keep pace with the vastly changing array of new  
2 technologies that now characterize modern mining  
3 operations.

4 So in the legislation, we ask of the  
5 legislature the ability to put in place regulations,  
6 as we do in every other statutory context. I would  
7 note on that, however, we recognize the technical  
8 nature of these issues and the special role that mine  
9 workers and mining companies need to play in advising  
10 and informing us of those regulations. So I would  
11 call your attention to the special Mine Safety Board  
12 that we set up or call for in this legislation so that

13 we have expert advice as we do develop and pursue  
14 those regulatory improvements to the program.

15 Last, I wanted to reflect briefly on the  
16 recommendations or now legislation coming from West  
17 Virginia in the aftermath of the terrible tragedy they  
18 have suffered. I hope we can discuss these matters in  
19 more detail in questions, but I did want to highlight  
20 that all of the three major recommendations or now  
21 legislation from West Virginia are very worthy of  
22 consideration, but we would be especially interested  
23 in making sure that the details of that legislation be  
24 reviewed, and we think in some areas we may have an  
25 ability to enhance those requirements or we have an

18

1 ability to point out procedures, for example, with  
2 regard to accident notification that we already follow  
3 in Pennsylvania that may seem to be less exacting than  
4 what West Virginia has put in place, but are deserving  
5 of more detailed review before drawing that  
6 conclusion.

7 Finally, Madam Chair, Mr. Chairman, I would  
8 just share with you, as we review the state of safety  
9 as it relates to mining in the state, we have prepared  
10 and shared with you as an attachment to my testimony a  
11 review of our records, our procedures and our  
12 statistics as it relates to mine safety. And I would  
13 point out, one, the unacceptable, which is that we  
14 lost two lives in deep mines last year, but the  
15 hopeful, and that is the key measures of safety, lost  
16 time accidents, for example, down 30 percent over five  
17 years and the number of accidents occasioning an  
18 investigation by the Department also down  
19 substantially in the last five years.

20 The overall trends are good, but as I know  
21 with the attention this committee is paying to this  
22 issue, one death is too many, and we share a  
23 commitment with you to try to make that as unlikely a  
24 situation even in an inherently dangerous profession  
25 as we possibly can.

1           Madam Chair, members of the committee,  
2 thank you for your time and attention.

3           SENATOR MARY JO WHITE: Thank you, Madam  
4 Secretary. I do want to commend you for the  
5 attachments to the testimony. It was very interesting  
6 reading and obviously a great deal of thought and work  
7 went into this and I do appreciate all the background  
8 information.

9           I know Senator Rhoades has another  
10 commitment, so with the committee's permission, I'll  
11 defer to him.

12           SENATOR RHOADES: Thank you, Madam  
13 Chairman. Good morning, Madam Secretary.

14           SECRETARY MCGINTY: Good morning.

15           SENATOR RHOADES: One of the things I have,  
16 I constantly hear about rules and regulations between  
17 the federal inspectors and our DEP inspectors. Are we  
18 going to be able to put things together both at the  
19 federal and state level to be able to ensure that we  
20 have the safety in the mines that we need?

21           SECRETARY MCGINTY: I think the answer to  
22 that, Senator, is yes. We do have a very strong  
23 working relationship with our federal counterparts.  
24 We believe, however, that it's important to retain a  
25 strong and effective state program as a complement to

1 the federal program.

2           I'd just offer two examples as to why we  
3 think that is important. One, we have seen a focus,  
4 as we should, in the aftermath of the West Virginia  
5 accidents on mine rescue teams. Under federal law,  
6 Pennsylvania would only have to have four mine rescue  
7 teams to meet the federal requirements.

8           It's two mine rescue teams to be active in  
9 service of each mine and to be able to arrive at the  
10 mine within two hours. And if you do that math, it  
11 would be four, two in the east and two in the western  
12 part of the state. We have 13 mine rescue teams, and

13 I think we'd all agree we would never want to see a  
14 situation where we reduce -- in fact, we probably  
15 would like to increase the number of those mine rescue  
16 teams.

17 Similarly and perhaps another thing that  
18 the importance of which is underscored in comparison  
19 to the tragedy in West Virginia, we call for and  
20 maintain a medical rescue team complete with mobile  
21 surgical capability that is dedicated to mine safety  
22 in Pennsylvania. Now, that's not required in federal  
23 law, but I think we would all agree again, in the  
24 interest of further harmonizing ties between federal  
25 and state, those extra efforts and the extra mile we

21

1 have gone to at this date we wouldn't want to lose.

2 SENATOR RHOADES: Can I say then that we as  
3 a state are ahead of where the feds are at?

4 SECRETARY MCGINTY: I think it is fair to  
5 say that we meet all federal requirements and we  
6 exceed those requirements in substantial extent in the  
7 key important areas, lifeline, mine rescue teams,  
8 medical safety responders, et cetera.

9 SENATOR RHOADES: I just want to make that  
10 point. I think Senator Kasunic has put together an  
11 excellent bill, and, as he said, we're willing to keep  
12 working on it to make it as good as we can. I just  
13 don't want to get caught up in the bureaucratic  
14 malaise so we can accomplish and get done what has to  
15 be done to protect the lives of the people who are  
16 working in the mines.

17 One other thing or another thing I'm  
18 thinking of is locating the miners. Whenever we look  
19 at this and we see this, it's matter of. Australia  
20 has come up with a text message system. Is there  
21 anything to stop us from doing that? Is there  
22 anything from us stopping and putting those centers  
23 in, those resource centers where the miners can gather  
24 and the lines running up to the surface so that we can  
25 do that identification?

1           SECRETARY MCGINTY: Good, thank you,  
2 Senator, for raising that. I did reflect on that  
3 briefly. First of all, as you know, three major  
4 pieces of legislation came out of West Virginia, one  
5 to cache additional air breathing apparatus. That we  
6 certainly would support and recommend that we add to  
7 this legislation so that it can be put in place as  
8 soon as possible.

9           The second had to do with notification  
10 requirements. That's where I was sounding a  
11 cautionary note. The West Virginia legislation on its  
12 face talks about 15-minute notification, whereas the  
13 proposal before you calls for a one-hour notification.  
14 The difference is our one-hour notification is from  
15 the time an accident is at all noticed as compared to  
16 the 15 minutes is from the time that the operator  
17 figures out exactly what has gone wrong, then within  
18 15 minutes of that calls the safety personnel. Point  
19 being that the 15 minutes and the one hour need to be  
20 examined more closely as you consider which of those  
21 provisions make more sense legislatively.

22           On your point specifically about the third  
23 piece of the West Virginia legislation with regard to  
24 communications and tracking devices, we would urge  
25 some directive in this legislation and a date certain

1 set for the Department in consultation with the Mine  
2 Safety Board we called for to institute a requirement  
3 for that type of technology.

4           Having said that, the only cautionary note  
5 is, we are aware of only one such technology that  
6 today is approved by the Federal Mine Safety and  
7 Health Administration. And that technology, while  
8 certainly better than nothing, does have substantial  
9 limitations as it relates to mining operations that  
10 are a thousand feet underground and mining operations  
11 where in the event of an emergency, just that cable  
12 infrastructure or power boost that you're relying on

13 for that technology could very well have gone out as  
14 well.

15 So only caution is perhaps a more expansive  
16 view of the technological options out there would be  
17 in order as we would institute a directive from the  
18 legislature along those lines.

19 SENATOR RHOADES: The only reason I bring  
20 this up -- and I'll make this my last one -- is  
21 there's always the issue of cost, cost, cost, and then  
22 we have to get, you know, competition of our ton of  
23 coal versus their ton of coal.

24 SECRETARY MCGINTY: Right.

25 SENATOR RHOADES: But what I've looked at

24

1 and seen, they said in the mine the size of Sago, West  
2 Virginia where 145 people are employed, the top cost  
3 would be \$100,000. Does that sound reasonable?

4 SECRETARY MCGINTY: I could only say I saw  
5 the same numbers, and I guess we all know in our  
6 personal experience that personal communications  
7 devices, at least the initial cost of them, is not  
8 usually that expensive. Now, operating those devices  
9 sometimes can be more expensive.

10 But I would hesitate to say, because,  
11 again, I think that we do need to do a more expansive  
12 examination of what technology might be out there.  
13 And, if I might, I would just point out to you -- and  
14 I want to thank Joe Sbaffoni for this -- I think in  
15 the aftermath of this tragedy, it could be that there  
16 are technologies out there that have not yet been  
17 recommended for this purpose, but that would now be  
18 recognized as viable for this purpose.

19 And the example I give you is a company  
20 that came to see us yesterday that makes something  
21 called chem/bio shelters. This company happens to be  
22 a Pennsylvania Company, Allentown. And they came to  
23 demonstrate yesterday this inflatable expandable  
24 shelter that was not developed for mine safety  
25 purposes, it was developed for the United States

1 military, but it is remarkable. And while it can  
2 immediately inflate and provide safe haven, it also  
3 provides up to some four days' worth of oxygen.

4 So I'm just saying a month ago we would not  
5 have known of this technology for a mining application  
6 and today my guess is that there are communications  
7 technologies we don't know about, but with a directive  
8 from this legislature they would come forward and we  
9 might be in a better place to pick the most  
10 appropriate technology or most effective technology.

11 SENATOR RHOADES: Thank you. I just want  
12 to add that someone coming out of the anthracite in  
13 our underground mining is severely limited in  
14 comparison to what you have in bituminous. Be more  
15 than willing to work, though, with the Secretary and  
16 the Chairman, Senator Kasunic and everyone else,  
17 because when it comes to lives lost in mines, there's  
18 no excuses. Thank you.

19 SENATOR MARY JO WHITE: Thank you, Senator.  
20 I just would like to caution the committee about  
21 legislating technology. I think we have to be very  
22 careful of that. That things move so quickly that if  
23 we -- that something we prescribe today or require  
24 today can be obsolete in a year.

25 So while I believe the Mine Safety Board is

1 a good idea and perhaps that's the body to which we  
2 should delegate some of these activities, the only  
3 concern I have there is, first of all, the board is  
4 rather small. It's really a representative of the  
5 mine operator, representative of labor, and the  
6 secretary of DEP, who, with all respect is not a  
7 mining expert. So I would suggest that perhaps that  
8 board could be expanded a little bit for some  
9 technical expertise.

10 And my second point would be perhaps there  
11 should be some appeal from rulings of that board. You  
12 had mentioned before that there had previously been

13 some method of appeal to Commonwealth Court, which is  
14 not there any longer. That was not with the Mine  
15 Safety Board, but was in another context. I think  
16 it's always a good idea to have some oversight or body  
17 that can review a decision.

18 SECRETARY MCGINTY: I think those are all  
19 worthwhile insights and comments. We tried to fashion  
20 a structure that had at least two features; one,  
21 expertise as it relates to safety with the companies  
22 and the miners participating in members of that board.

23 But, also, frankly, in other structures we  
24 looked at, it was hard to find structures that  
25 wouldn't get bogged down in an inability to make a

27

1 decision, and so we did fashion it so that there would  
2 be a simple majority that ultimately could make a  
3 decision on the key matters that would be presented.  
4 But, obviously, an area very worthy of further  
5 discussion.

6 SENATOR MARY JO WHITE: Thank you.  
7 Questions? Senator Stout.

8 SENATOR STOUT: Thank you, Madam Chair  
9 Lady. Good morning, Madam Secretary.

10 As you know, I've been privileged for a  
11 number of years to represent the 46th Senatorial  
12 District in southwestern Pennsylvania, comprised of  
13 the leading coal production counties of Washington and  
14 Greene. The majority of the tonnage in this  
15 Commonwealth is produced in those counties and they're  
16 contiguous to Fayette County that my good friend and  
17 colleague, Senator Kasunic, represents, so we have a  
18 common interest, and that is why I'm a co-sponsor of  
19 Senate Bill 929.

20 One of the questions I would like to pose  
21 to you, Madam Secretary, as previous speakers, Senator  
22 Kasunic's opening remarks and Senator Rhoades and his  
23 questioning about the new technologies that may be  
24 available, because I am contiguous to West Virginia  
25 and have a similar coal mining community in our

1 region. On these new technologies, do you recommend  
2 that we create a specific subcommittee to do research  
3 on new technologies like those mentioned in Australia,  
4 the locators and the communicate, to do that, to make  
5 recommendations so that we can maybe require that to  
6 be implemented when that technology becomes available  
7 for review and make recommendations?

8 SECRETARY MCGINTY: Senator, I think that  
9 kind of standing advisory board continuously helping  
10 us update the technology we're implementing to ensure  
11 safety would be very welcome. And I would just call  
12 your attention to the technical advisory committee we  
13 do have with respect to diesel equipment. And that  
14 has been an effective mechanism that we retain in this  
15 legislation because it has worked, as you suggest, to  
16 make sure that we are on top of those technological  
17 developments, in that case at least as it relates to  
18 diesel technology.

19 SENATOR STOUT: As you know, Madam  
20 Chairman, post World War II technology in coal mining,  
21 post World War II coal mining in Pennsylvania was  
22 dominated by the steel industry, U.S. Steel,  
23 Bethlehem, J&L, LTB, all the steel companies used coal  
24 production to produce the coke that made the steel.  
25 Now there are very few steel companies still in the

1 mining business and it's mostly commercial mining  
2 companies, such as Consol Energy and Foundation Coal  
3 are the leading producers of coal now and the majority  
4 of that coal goes to the power industry today.

5 So what -- these new laws you're going to  
6 propose takes into consideration new technology, in  
7 recent years has been longwall production, how will  
8 you recommend that longwall production be addressed in  
9 safety issues?

10 SECRETARY MCGINTY: Well, Senator, I think  
11 this highlights one of the important reasons that we  
12 do feel strongly that we retain a strong and effective

13 state program in addition to the oversight that the  
14 Federal Mine Safety Health Administration provides.

15 Specifically, you mentioned Longwall  
16 technology. It's important to note that the federal  
17 law or MSHA inspects or approves and oversees  
18 equipment in the mine, but only at the mine face, only  
19 in the hazard area in the in by part of the mine. All  
20 out by technology is only approved by the Department  
21 of Environmental Protection.

22 So that whole universe that isn't located  
23 squarely at the face of that mine is technology that  
24 would be subject to review, approval today and under  
25 this legislation to ensure its safety and

30

1 effectiveness.

2 SENATOR STOUT: So what you're telling me,  
3 the conveyor belts that carry the coal from the mine  
4 face to the surface, those regs are totally state  
5 regulations?

6 SECRETARY MCGINTY: Those are at the  
7 elevators, the shafts, the conveyor belts. I guess to  
8 the extent that the conveyor belt would extend into  
9 the in by area, into the mine face, the working face,  
10 that piece of the equipment would also be subject to  
11 MSHA review, but we do the approval in the entirety of  
12 the rest of the mine workings in addition to that mine  
13 face.

14 Let me also highlight for you something we  
15 include in this legislation and would commend to the  
16 legislature in an urgent basis. We also just saw the  
17 situation in Canada that had to do with a mine fire as  
18 well as the second situation in West Virginia in the  
19 Alma Mine, which was a mine fire, I believe related to  
20 the conveyor belt.

21 In this proposed legislation, we also want  
22 on an urgent basis further to enhance our requirements  
23 in ensuring the fire resistance of those conveyor  
24 belts. That's the kind of additional technology and  
25 equipment protections that we would be acting on

1 pursuant to this legislation if passed by this  
2 committee and the entire legislature.

3 SENATOR STOUT: Thank you, Madam Secretary.  
4 My point of question is, I know you'll be appearing  
5 before the appropriation committee next month after  
6 Governor Rendell makes his budget requests next week,  
7 and I would hope that you would be prepared at  
8 appropriation committee to advise us if you would have  
9 sufficient resources in your Department to take on  
10 this review and implementation of new requirements to  
11 advise the appropriations committee of what type of  
12 additional resources you may need to do your job.

13 SECRETARY MCGINTY: Thank you, Senator, I'm  
14 happy to take you up on that invitation.

15 SENATOR STOUT: Well, you have to have the  
16 resources to do the job, Madam Secretary. Thank you,  
17 Madam Chairwoman.

18 SENATOR MARY JO WHITE: Senator Musto?

19 SENATOR MUSTO: Thank you, Senator. Good  
20 morning.

21 SECRETARY MCGINTY: Good morning.

22 SENATOR MUSTO: I am reading from the  
23 proposed bill the importance of mine inspectors, which  
24 we all know, and, of course, the number of notices of  
25 violations have been reduced year by year and, of

1 course, the number of compliance orders that have been  
2 issued has also been reduced. Is the reduction due to  
3 a reduction in the industry?

4 SECRETARY MCGINTY: It's important that you  
5 underscore those numbers and important to realize that  
6 they are driven by several factors and not just one.  
7 They are driven by the increased safety and the  
8 increased responsibility that has been assumed by all  
9 involved in mining.

10 However, they also are driven by the fact  
11 that we have fewer miners in the mines. We have more  
12 technology than miners in the mines than previously

13 was the case and we have fewer mining operations.  
14 Just to share one number with you, in 1990, we had 88  
15 underground bituminous mines, and in 2004, we had 46  
16 such mines.

17 So, Senator, you rightly called attention  
18 to those numbers and also I think the attention that  
19 needs to be paid in understanding the various things  
20 that are at work in driving those numbers.

21 SENATOR MUSTO: Are you satisfied that we  
22 have sufficient inspectors?

23 SECRETARY MCGINTY: I am concerned and I  
24 was going to respond in response to Senator Stout's  
25 comment about resources. I am concerned about overall

33

1 human capital trends in the mining profession.

2 What I mean by that is we've experienced  
3 what those in mining refer to as a lost generation.  
4 And what that means is that in maybe the last  
5 generation where the price of coal had dipped down  
6 such that the industry was not growing and realizing  
7 the profits that today it is seeing or the price of  
8 coal that today it sees, the number of young people  
9 coming into the mining profession was reduced as well.  
10 And so we do not have that store house, if you will,  
11 of human capital that had been built up over the last  
12 20 years that we would like to see.

13 Now, that is a further problem, because  
14 many of the key skill sets that we need to ensure mine  
15 safety and, in fact, for the mining profession period  
16 require substantial numbers of years underground  
17 before people can assume certain positions. So, for  
18 example, in the case of an inspector, I believe the  
19 number is ten years underground. For electrical  
20 inspectors, it's on the order of ten years. And other  
21 parts of the key pieces of the team that we need to  
22 see, we not only don't have as many people to draw  
23 from, those people don't have that universe of  
24 substantial experience we need to see.

25 And the last piece is now that the

1 mining -- the fortunes of the coal and the mining  
2 industry have taken off again, there is a race for  
3 talented mining personnel, and, frankly, we're working  
4 right now in the Department to reclassify some of our  
5 mine inspector and other key staff positions so that  
6 we can pay people more, because we are losing those  
7 people either to MSHA, to the federal mine safety  
8 personnel, or to industry, and we need to better keep  
9 up with what the market is demanding.

10 SENATOR MUSTO: So you are certainly  
11 addressing the issues.

12 SECRETARY MCGINTY: We are trying to,  
13 Senator, but it is bigger than just our department.  
14 It has to do with the situation -- the positive  
15 situation for the mining industry now that we're all  
16 pleased about. But we do have to really focus and  
17 redouble our efforts on training. We do need to be  
18 able to pay people to retain them and we do need to  
19 recognize that there are key skill sets that are in  
20 demand and not in as much supply as we'd like to see.

21 SENATOR MUSTO: Madam Secretary, I noticed  
22 in the bill, any regulations proposed by the Mine  
23 Safety Board would not be subject to requirements of  
24 open meetings and also or the Regulatory Review Act.  
25 Is there any reason for that?

1 SECRETARY MCGINTY: What informed that was  
2 two things. One was a sense of the special and  
3 technical nature of these issues and second a sense of  
4 urgency about moving forward with frankly 40 or 50  
5 years of deficit since the last time the law was  
6 updated of regulatory initiative that we feel is  
7 required. That's what informed our decision making  
8 there, but obviously again it's something that should  
9 be discussed and worked through, and the benefit of  
10 this committee's insight obviously would be welcome.

11 SENATOR MUSTO: Are we breaking new ground  
12 here?

13 SECRETARY MCGINTY: Well, let me step back  
14 and say that Pennsylvania has traditionally been  
15 recognized as a state with a very strong mine safety  
16 program and we have won awards in that regard. Having  
17 said that, in terms of the specific recommendations  
18 before you, let's focus on the Mine Safety Board.

19 The state of West Virginia, I believe, is  
20 able to issue regulations, able to issue fines and  
21 penalties for failure to meet the regulations. So in  
22 that respect, while again I think we still have a  
23 strong program that we should be proud of, there are  
24 aspects of this legislation, quite honestly, where  
25 we're trying to catch up with where other states and

36

1 where federal government and I think where public  
2 expectation would require us to be.

3 SENATOR MUSTO: I'm still confused. If the  
4 Mine Safety Board recommends a regulation -- at this  
5 point in time, I won't call it a proposed  
6 regulation -- but if the Mine Safety Board recommends  
7 a regulation, what happens?

8 SECRETARY MCGINTY: Then that regulation  
9 would go into full force and effect, again assuming  
10 that the simple majority called for in the proposed  
11 legislation was met. Similar to --

12 SENATOR MUSTO: Circumvents DEP and  
13 everyone else?

14 SECRETARY MCGINTY: I'm sorry?

15 SENATOR MUSTO: Their proposal.

16 SECRETARY MCGINTY: Right.

17 SENATOR MUSTO: Their proposed regulation  
18 would be in force circumventing DEP?

19 SECRETARY MCGINTY: Well, as Chairman White  
20 pointed out, DEP serves as one of the three members of  
21 the Mine Safety Board, as we have proposed it.

22 SENATOR MUSTO: It's becoming to be  
23 clearer.

24 SECRETARY MCGINTY: Well, it's only 200 and  
25 some pages long. I can't imagine why you don't know

1 it chapter and verse.

2 SENATOR MUSTO: Thank you very much.

3 SECRETARY MCGINTY: Thank you.

4 SENATOR MARY JO WHITE: Madam Chair, man,  
5 we've touched on something philosophically that I'd  
6 just like to get your sense of. In the industry  
7 comparisons that you attached to your testimony, which  
8 are very interesting, we show that per hundred  
9 thousand workers OSHA reports that mine fatalities are  
10 28.4. So 28.4 is the number for mining. If you look  
11 at logging, it's 92.4 per 100,000 fatalities.

12 SECRETARY MCGINTY: Yes.

13 SENATOR MARY JO WHITE: Fishing, 86.4.

14 There are many -- Structural iron and steelworkers, 47  
15 fatalities per 100,000. So mining would appear to be  
16 relatively safe when compared to these other hazardous  
17 occupations, and yet it is much, much more highly  
18 regulated. And the part that intrigues me is that I  
19 don't know of any other regulatory program where there  
20 is a parallel federal program and state program where  
21 it isn't the state administering or having primacy, it  
22 is two completely separate regulatory programs.

23 And my concern is in this, have we made --  
24 have you made every effort in putting together this  
25 200-page bill to minimizing the overlap, duplication

1 and differences? Because, you know, regulation costs  
2 money and the coal industry to employ these miners has  
3 to be competitive.

4 So my question is -- it's a long way of  
5 leading into a question -- but my question is, have  
6 you made every effort to make the regulations as  
7 consistent with the federal program as possible so as  
8 to avoid these additional costs and overlaps and  
9 duplications?

10 SECRETARY MCGINTY: Yes, Madam Chair, we  
11 have. And I do want to say just in your looking at  
12 the OSHA numbers that to my great chagrin we compiled

13 these numbers just as I was heading for the airport,  
14 and I saw aircraft pilots and flight engineers right  
15 up in the top, which was a little disconcerting.

16 Yes, we have, with the exception of some of  
17 the areas that I have highlighted where, for example,  
18 the number of mine rescue teams that we organize,  
19 train and maintain, the degree to which we approve and  
20 then inspect equipment that is not only at the mine  
21 face but anywhere in the mine.

22 Also, I think very important where we have  
23 maintained the requirements that the state institutes  
24 is in the ability to have medical personnel on site  
25 immediately in what we call the smart team, the

39

1 medical response team, that also we support and have  
2 on site.

3 It's important also to note that there are  
4 areas that you might think are overlapping or  
5 redundant, and I'll highlight one or two. MSHA calls  
6 for training. MSHA calls for certification of miners.  
7 But we do the training and especially with this  
8 legislation, we do the certification. So there are  
9 areas where, yes, there is a federal pronouncement, if  
10 you will, but it's not necessarily an area where there  
11 would be conflict or duplication. There is a division  
12 of responsibility as it relates to many of these  
13 requirements.

14 I would only say I guess in conclusion that  
15 if there are other specific areas where we can further  
16 refine our interrelationship with MSHA, we would  
17 certainly be very interested in looking at those  
18 suggestions. We did in conjunction with the industry  
19 in preparing this legislation try to take as many of  
20 those recommendations as possible.

21 But, in this respect, the situation isn't  
22 all that different from our interrelationship with  
23 U.S. EPA. As you know, even where we have primacy in  
24 a certain area, U.S. EPA can always, and we're  
25 grateful that they don't often, but they can always

1 come in and supersede our enforcement activities and  
2 undertake the matter or take the matter into their own  
3 hands. So this is a type of relationship that I think  
4 is more characteristic of how we typically relate with  
5 our federal partners, and for us it's been effective,  
6 and I think the statistics we've looked at would say,  
7 as you rightly point to, that we're doing a good job.  
8 We can do more, but we're doing a good job and people  
9 in the mines are safer because of it.

10 SENATOR MARY JO WHITE: Thank you. Any  
11 other questions? Senator Kasunic?

12 SENATOR KASUNIC: Thank you, Madam  
13 Chairman. Coming from southwestern Pennsylvania,  
14 particularly Fayette County, you know, the soft coal  
15 region, I have a lot of retirees that live in that  
16 particular region. And since this has kind of been  
17 brought to the forefront, we've been hearing about it  
18 in the news media and stuff, a lot of retirees have  
19 talked to me about the fact that -- particularly those  
20 men who worked for companies like U.S. Steel,  
21 Bethlehem and J & L. And what they're telling me, in  
22 their day, when they worked in the mine, that in terms  
23 of safety, there were caches of oxygen and different  
24 types of safety things that we're talking about  
25 reinventing today, and at one time it was the

1 practice.

2 Was that simply something that those  
3 companies implemented themselves or did we regulate and  
4 somehow change that? What has happened in terms of  
5 why that has all changed, when at one time that was  
6 the standard of the industry and now all of a sudden  
7 it doesn't exist?

8 And I'm not sure if maybe you know the  
9 answer, but I see Mr. Scaffoni here, he might be able  
10 to answer that or, you know, maybe somebody else. But  
11 what has happened? Why have we changed? There were  
12 places where there were first-aid stations, all these

13 different things, that no longer exist. What  
14 happened?

15 SECRETARY MCGINTY: Well, first of all, we  
16 do have several mines operating in Pennsylvania where  
17 there are those additional oxygen caches, and Consol  
18 and Foundation both can speak to that or George Ellis  
19 when he delivers his testimony.

20 I think one of the changes to keep in mind,  
21 however, is that while we might agree this is not  
22 sufficient, federal law now requires that each miner  
23 on their person have a breathing apparatus. Whether  
24 or not that was the case previously, I don't know, but  
25 this is one of the areas that has been the province of

42

1 federal law and I think has evolved to focusing on the  
2 individual miner.

3 But we agree with you, we should take a  
4 page from West Virginia's book on this and call for  
5 across-the-board those additional caches of air supply  
6 in the mines.

7 SENATOR KASUNIC: One additional question.  
8 You heard me speak to the issue of the safe room or  
9 developing some standard.

10 SECRETARY MCGINTY: Yes.

11 SENATOR KASUNIC: And you brought up the  
12 biochemical industry, having the tent type thing where  
13 we could, you know -- a crew of miners could get into  
14 something like this and obviously stay alive for as  
15 much as, you know, maybe a week or so.

16 SECRETARY MCGINTY: Yes.

17 SENATOR KASUNIC: Do you have any figures  
18 on how much this would cost? Because certainly I  
19 think it was brought up earlier, we're always looking  
20 at costs, and sometimes this new technology isn't cost  
21 effective. And do we have any idea what one of these  
22 may cost?

23 SECRETARY MCGINTY: Well, yes, sir, we now  
24 do, \$20,000 per unit. I think this also underscores  
25 the reason why, to pick up Chairman White's comment

1 and maybe to put a finer point on what we would like  
2 to see in the legislation, a directive to us to  
3 institute requirements related to these safe places in  
4 the mine, but stopping short of prescribing a specific  
5 technology.

6 If Senator Rhoades was still here, he  
7 probably would quickly point out or, Senator Musto,  
8 you will, in the anthracite, you might not be able to  
9 accommodate a device like this, because, as you know,  
10 those miners go in on their back and there might not  
11 be room for something like this in the anthracite  
12 mines.

13 Anyway, without belaboring the point, these  
14 technologies are available. It's not one size fits  
15 all. Different geological structures will enable or  
16 allow different types of safe houses to be put into  
17 the mines, but we would very much welcome a directive  
18 in this legislation that by date certain  
19 specifications be made for this kind of protection in  
20 the mine.

21 SENATOR KASUNIC: Thank you. No further  
22 questions.

23 SENATOR MARY JO WHITE: With all respect, I  
24 tend to favor a different approach. I think that  
25 perhaps it's better to give the operator a standard

1 that has to be met, a safety standard, and let him  
2 decide how best to get there, rather than have the  
3 Department prescribing specific technologies for  
4 specific situations. As long as they meet that  
5 objective, you would rule on whether, in fact, this is  
6 sufficiently protective of human health and let them  
7 pick their technologies.

8 SECRETARY MCGINTY: Chairman, I think we  
9 would agree on that, that -- trying to play on the  
10 pronoun here -- that she, the mine operator, we would  
11 direct to meet the performance standard. So I think  
12 that that is a valuable approach.

13 But also, though, again, we would recommend  
14 that developing the performance standard would also be  
15 something that best could be done through something  
16 like the Mine Safety Board we've proposed where you  
17 have the industry represented, where you have labor  
18 represented and where you have our mine safety  
19 professionals represented to fashion what those  
20 specifications should be.

21 SENATOR MARY JO WHITE: Thank you very  
22 much, appreciate your testimony.

23 SECRETARY MCGINTY: Thank you, Madam Chair,  
24 and members of the committee.

25 SENATOR MARY JO WHITE: We're a little off

45

1 time. I'll accept full responsibility for that.

2 The next witness is the Honorable David E.  
3 Hess, former secretary of Department of Environmental  
4 Protection.

5 Welcome, David. Thank you for coming.

6 SECRETARY HESS: It's good to be here  
7 again. I will try to get you back on time as best I  
8 could. I did submit a copy of the testimony, but I  
9 would like to basically hit some of the highlights, if  
10 I could. And I do appreciate the opportunity to be  
11 here, Senator White and Senator Musto, members of the  
12 committee, to talk about the topic of underground mine  
13 safety in Pennsylvania.

14 I want to thank Senator Kasunic, and I  
15 believe Representative Bastian is here, for sponsoring  
16 the legislation that really takes the lessons learned  
17 from the Quecreek mine rescue accident and makes good  
18 changes in our bituminous deep mine safety law.

19 I found it particularly an interesting  
20 coincidence that this legislation is numbered Senate  
21 Bill 949. Nine for nine, of course, Governor's  
22 Schweiker's shorthand for announcing that the nine  
23 miners, trapped miners, were alive, and were about to  
24 be rescued.

25 The Quecreek mine accident in July of 2002

1 and the rescue -- and particularly the rescue of those  
2 nine trapped miners was the result of the  
3 extraordinary efforts of hundreds of rescue workers,  
4 safety training given to the miners, Pennsylvania's  
5 laws and mining regulations, our own experience in  
6 dealing with emergencies, many prayers and a little  
7 bit of luck.

8 In fact, our experience with Flight 93 that  
9 happened, the crash of Flight 93 that happened just  
10 ten months before right in Somerset County gave us a  
11 very valuable working knowledge about local  
12 capabilities and refreshed relationships with local  
13 emergency response personnel that helped tremendously  
14 in the rescue operation.

15 I think it was also the fact that  
16 Pennsylvania has a history of dealing with different  
17 kinds of things, from the Three Mile Island accident,  
18 to floods and actual disasters that resulted in what I  
19 think many in the emergency management field call a  
20 forward leaning philosophy of how to be very proactive  
21 in dealing with emergencies.

22 I would like to mention that we were also  
23 deeply touched by the many prayers of support from the  
24 families of the miners and literally the entire world,  
25 who watched the rescue operations unfold. And, as I

1 said, we were lucky. I think anybody who lives in  
2 coal country knows that mine accidents do not  
3 typically turn out like Quecreek and deaths are still  
4 all too common. You can really do everything right in  
5 responding to a mine accident and still have a  
6 terrible result. I think the recent experiences in  
7 West Virginia and, in fact, our own Armstrong County  
8 in December really highlight this point.

9 After Quecreek, Governor Schweiker took a  
10 number of actions to not only look for the causes of  
11 the accident, but also evaluate the rescue operation  
12 that took place. In addition to the accident

13 investigations that we undertook, the federal  
14 government also took their own -- undertook their own  
15 accident investigation. And we as part of that  
16 accident investigation took the very unusual step --  
17 it had never been done before -- of putting our  
18 preliminary report of the causes of the accident out  
19 for public review, inviting people to correct the  
20 record, add to the record, that we had uncovered from  
21 several dozen interviews over the course of several  
22 months at that point. And that was a very unique  
23 thing that had never been done before.

24 That accident investigation was completed  
25 after we left office in July. And I want to thank

48

1 Secretary McGinty and Governor Rendell for following  
2 up on the support and investigation and whose really  
3 ultimate conclusion did not vary very much from the  
4 preliminary report that we issued in November of 2002.

5 Governor Schweiker also instituted review  
6 by not only mine operators, but our Bureau of Deep  
7 Mine Safety of the safety zones between active mining  
8 at the time, underground mines and water-filled mines  
9 next door, because as we all know, the accident at  
10 Quecreek was caused by the fact that the miners  
11 thought they were 300 feet away from a water-filled  
12 Saxman Mine next door. They obviously were not. They  
13 broke through and the water flooded the Quecreek Mine.

14 As a result of that review, we instituted a  
15 larger safety zone where people had -- the mine  
16 operators had to submit to the Department hard  
17 information, drill results, and other hard information  
18 about how far away they were from mine voids. Instead  
19 of the usual 200-foot safety zone that's called for in  
20 the law, we instituted a 500-foot in bituminous area  
21 and a 300-foot in anthracite area.

22 As a number of people have mentioned, the  
23 governor's commission came out with a total of 48  
24 different recommendations for changing procedures,  
25 laws and regulations for the Department. The

1 commission was very active in a very short period of  
2 time. They held a number of public hearings, field  
3 visits. They even went into the Quecreek Mine to look  
4 firsthand at the spot where the accident happened.

5 Only one of those recommendations out of  
6 the 48 was not accepted by Governor Schweiker. That  
7 recommendation was the commission felt that it was  
8 okay to go back to the 200-foot safety zone. The  
9 governor felt and we felt very strongly that we needed  
10 to keep the 500-foot safety zone in bituminous and  
11 300-foot in anthracite.

12 As Secretary McGinty mentioned, the  
13 Department has moved forward with a number of  
14 different initiatives as a result of the  
15 recommendations from the investigation of the  
16 commission. I would like, though, to draw the  
17 committee's attention to several different issues in  
18 the legislation where I think they might have an  
19 opportunity to improve it.

20 I think, as you know, Governor Schweiker  
21 established a very strict families first policy in  
22 sharing information about the status of the mine  
23 rescue with families of trapped miners during  
24 Quecreek. We provided updates to the families on an  
25 hourly basis, and before releasing any information to

1 the public or to the media, the families were the  
2 first to know.

3 We never forgot during this difficult time  
4 that while we were concentrating on getting the right  
5 strategy, equipment and people in place to actually do  
6 the rescue, there were wives, mothers, dads and  
7 children waiting anxiously and literally hanging on  
8 every single word that we uttered in public.

9 And Governor Schweiker's family first  
10 policy I think was a very important aspect. We saw in  
11 West Virginia the problems that communications cause  
12 if you don't or are not very careful about how you do

13 your communicating and making sure your information is  
14 correct.

15 I would like to see Pennsylvania's mine  
16 rescue program officially include a provision for a  
17 families first liaison as part of the program, just  
18 like equipment, just like training, just like other  
19 parts of the program. I think the family deserve --  
20 families deserve to have a representative to deal with  
21 their needs, provide them with accurate information  
22 and follow up after the rescue to make sure that their  
23 needs are taken care of.

24 Second, I think that the Department -- It  
25 needs to be clear on this legislation that the

51

1 Department has the full authority that it needs to  
2 respond to not only the mine rescue, but also gather  
3 the appropriate information in investigating the  
4 accident afterwards.

5 To respond to the Quecreek accident, we had  
6 to drill drain holes, we had to construct sediment  
7 ponds, we had to put in place emergency equipment, and  
8 afterwards staff interviewed dozens and dozens of  
9 people, collected boxes of records and information.

10 While Governor Schweiker was on the site to  
11 help us cut through that red tape and we had all the  
12 cooperation we could ever ask for during the rescue  
13 operation, I think it would be reassuring to clarify  
14 that all the powers and authorities the Department  
15 have and are outlined in Section 105 of the  
16 legislation can also be applied to the rescue and to  
17 the investigation.

18 I think the third point is open adoption of  
19 regulations, and I think Senator Musto's earlier  
20 question hit on that point. Mine safety is an  
21 important public issue. It should be discussed in the  
22 public. And I think that the committee should look at  
23 what the appropriate level of public review and public  
24 access to information is as you look at this Mine  
25 Safety Board concept to adopt regulations and

1 requirements.

2           Again, I think the Mine Safety Board  
3 concept is a good one, because it allows under the way  
4 the legislation is drawn now changes to be made in the  
5 program. This legislation as it stands now is 215  
6 pages long. That's only a portion of a law. That  
7 really reads more like set of regulations. And I'd  
8 like to strongly support the notion that's in the bill  
9 about a Mine Safety Board that allows new regulations  
10 to take advantage of new technologies, new procedures  
11 and new approaches to mine safety to be incorporated  
12 without going back to the General Assembly each and  
13 every time.

14           For example, in the legislation, you  
15 have -- it's specific -- And this goes back years and  
16 years and years, it's very specific. You have the  
17 size of a bucket mandated in the act. You have form  
18 numbers that you have to report on mandated in the  
19 act. And I was very glad to see the Mine Safety Board  
20 concept included.

21           I think last -- and this is an important  
22 point -- for dealing with issues after the accident or  
23 after a mine rescue operation. In the case of  
24 Quecreek, there was a lot of restoration work that was  
25 done, needed to be done after the accident. We

1 drilled a number of holes, we drilled a rescue shaft.  
2 There was a lot of equipment, staging areas and  
3 different things that required us to go on private  
4 property. That all had to be restored after the  
5 accident.

6           And it is a small point, perhaps, but I  
7 think it's an important point that the Department be  
8 able to collect those restoration costs from the mine  
9 operators, part of rescue operations, and that the  
10 fund that's established in here be able to pay  
11 restoration costs. Because it helps tie up all those  
12 loose ends that you have after the rescue operation is

13 over.

14 I'd like to conclude simply I think by  
15 saying in part that the Quecreek mine rescue was a  
16 miracle. It was a life-changing event for those of us  
17 who were involved and we will be forever joined  
18 together by a unique bond because of this  
19 accomplishment. As someone who's been in public  
20 service for most of my life, I was particularly proud  
21 of the hundreds of men and women in public service, in  
22 DEP, the state police, PEMA, military affairs,  
23 PennDOT, county agencies, local first responders, and,  
24 of course, Governor Schweiker who took part in the  
25 rescue.

54

1 This is what public service is all about,  
2 making a difference, and there is no higher calling  
3 than to help save the life of someone else. From DEP,  
4 Richard Stickler, Joe Scaffoni, Lynn Jamison,  
5 Ellsworth Pauley, Bill Brookshar, Tom McKnight were  
6 all presented with the governor's award for public  
7 service for their role in this rescue.

8 At the same time, rescue of the miners at  
9 Quecreek was not enough. We have to learn the  
10 lessons -- even though this was a successful rescue,  
11 we have to learn the lessons that were presented  
12 during that rescue that came out of the various  
13 investigations, and I'm glad the committee is  
14 considering these legislative changes today.

15 I want to thank you for the opportunity to  
16 be here. I'd be happy to answer any questions that  
17 you may have.

18 SENATOR MARY JO WHITE: Thank you,  
19 Mr. Hess. I just have one point of clarification.  
20 Did I understand you to say that you support the Mine  
21 Safety Board concept, but do you believe it should be  
22 subject to the regulatory procedures, acts, so that it  
23 is a public process?

24 SECRETARY HESS: I think you need to look  
25 at that and the open meetings law requirements to make

1 it a more open process. You'll have to judge how open  
2 you want to make it, but I think it needs to be an  
3 open process, because a more open process gives people  
4 more confidence in what you're doing.

5 And I also want to say one other detail in  
6 here that I did recommend was perhaps an emergency  
7 rulemaking authority, and there are some provisions  
8 for doing that in other places. So that if you come  
9 up on a situation where you cannot deal with the  
10 regular rulemaking process or some sort of public  
11 review process that you have the ability to get a  
12 requirement in place very, very quickly under the  
13 right circumstances.

14 SENATOR MARY JO WHITE: What would those  
15 circumstances be?

16 SECRETARY HESS: Well, I think one of the  
17 things that we had to deal with after the Quecreek  
18 accident was this issue of a safety zone. I mean, the  
19 law specifically said a 200-foot safety zone needed to  
20 be in place and that you had to take a look at what's  
21 ahead of you before you can even mine closer than  
22 200 feet. It was the judgment that after the review  
23 of the existing mining operations that 500 feet was a  
24 more appropriate level.

25 Now, we did not find, to the best of my

1 recollection, any other situations like Quecreek where  
2 they were that close. But putting a requirement in  
3 place like that, based on a survey and good  
4 information, the ability to update a requirement like  
5 that would have been very important at the time. And  
6 although we did it in a legal way, obviously, it would  
7 have been better to have a good process in place.

8 SENATOR MARY JO WHITE: Any questions?

9 SENATOR STOUT: Yes. Thank you, Madam  
10 Chairman.

11 Mr. Hess, during your tenure as secretary  
12 of DEP and now this morning you heard the testimony

13 from Secretary McGinty about the mapping and so forth  
14 that, as you know, many of the active mine areas are  
15 contiguous to other areas that may be worked out,  
16 mined out, and many of these coal companies that had  
17 those operations are no longer around and they've  
18 either gone bankrupt or out of business.

19 Do you think there's difficulty in  
20 obtaining the maps and information you need for this  
21 detail?

22 SECRETARY HESS: I think it certainly was  
23 before Quecreek, but after the Quecreek accident when  
24 we put out a call and then the follow-ups that  
25 Secretary McGinty did during 2003, that initiative

57

1 resulted in lots of maps that no one ever heard of  
2 coming into the Department so that they could copy  
3 them. And that was a good thing, because maps were  
4 squirreled away in offices and engineering companies  
5 and colleges, universities, you know, a lot of  
6 different places.

7 But as a result of that, of the difficulty  
8 that we uncovered with Quecreek, we had I think an  
9 excellent response from people. They submitted lots  
10 and lots of maps. And as Secretary McGinty said, they  
11 are now going through and digitizing them and putting  
12 them in a form where they can be used.

13 I've no doubt that mapping will always be  
14 an issue. We can narrow the gap, but I think also the  
15 changes that were made to not just rely solely on  
16 mapping to identify where that safety zone should be,  
17 but hard information, drilling, new technologies to  
18 drill ahead of mining and that sort of thing,  
19 supplements what the extra maps that were collected.

20 SENATOR STOUT: Thank you.

21 SENATOR KASUNIC: Very briefly, Madam  
22 Chairman, just a comment. David, as a person who was  
23 on site along with Representative Bastian, certainly,  
24 you know, we just want to thank you and congratulate  
25 you, Governor Schweiker, Joe Scaffoni, the rest of the

1 deep mine safety folks and everybody who had a hand in  
 2 that rescue. You know, you guys did a tremendous job  
 3 and you went about it and you worked in like fashion,  
 4 got the job done, brought nine men out. And I just  
 5 commend you and the volunteer fire department,  
 6 everybody that played any role in that rescue. Thank  
 7 you so much for all your hard work and effort in  
 8 making that successful.

9 SECRETARY HESS: Thank you very much. As I  
 10 said, this was not one person, this was not two  
 11 people, it was lots of people working together. And,  
 12 as I mentioned, I was never prouder in my tenure of  
 13 public service than I was working with the kind of  
 14 people that we had the opportunity to work with during  
 15 that rescue.

16 SENATOR MARY JO WHITE: Thank you,  
 17 Mr. Hess. The committee echoes Senator Kasunic's  
 18 comments, I'm sure. Thanks.

19 SECRETARY HESS: Thank you very much.

20 SENATOR MARY JO WHITE: United Mine Workers  
 21 of America, Edward D. Yankovich, Jr.

22 Good morning, Mr. Yankovich. Thanks for  
 23 being here.

24 MR. YANKOVICH: Good morning, Senator.  
 25 Thank you all very much. Certainly I just want to

1 begin on behalf of our international president, Cecil  
 2 Roberts, and secretary/treasurer Dan Kane, I want to  
 3 thank the committee, want to thank you, Senator, and  
 4 all the members of the committee for having the United  
 5 Mine Workers have a voice.

6 But, most importantly, I would just begin  
 7 with a statement that I am very humbled and honored to  
 8 sit here today over such a grave issue, because I  
 9 understand that United Mine Workers for the past 116  
 10 years has been the voice of authority and the voice of  
 11 reckoning for those miners who work underground in  
 12 this Commonwealth. Whether we represent them or not,

13 this union has stood for their health and safety.

14 So I sit here today very humbly because I  
15 represent today, here's a voice of the miner who's  
16 working underground, Ruth Bolton in Indiana County, or  
17 running a shearer in Greene County or a shuttle car in  
18 Washington County or shoveling a belt in Cambria  
19 County. That's a very weighty thing on my mind and I  
20 understand that.

21 So, again, we begin by thanking you. And,  
22 Senator Kasunic, thank you very much for introducing  
23 the legislation that we're here talking about today.  
24 And all the committee members, we thank you for again  
25 recognizing the union and recognizing the need for

60

1 reform for health and safety for mine workers, coal  
2 miners in this Commonwealth.

3 I only regret that I have come to speak on  
4 the heels of terrible tragedies that befell the Sago  
5 miners and those at Massey's Alma #1 mine in West  
6 Virginia. Our hearts and our prayers go out to those  
7 miners' families, their loved ones and their  
8 communities.

9 We also wish to extend our deep  
10 appreciation for the mine rescue teams that  
11 participated in those mine rescue efforts, two of  
12 which were from Pennsylvania, and to the federal and  
13 state inspectors and United Mine Worker safety  
14 committee members who travel and inspect the mines  
15 regularly, working tirelessly to protect the nation's  
16 miners.

17 I will first review how current mine safety  
18 laws came into being, problems with the enforcement of  
19 current laws and regulations and how those  
20 deficiencies have contributed to make coal mining one  
21 of the most dangerous industries in the nation, how we  
22 have the knowledge and ability to substantially  
23 improve miners' health and safety and what this  
24 Commonwealth can do to help improve miners' health and  
25 safety.

1           As I said, for 116 years, the United Mine  
2 Workers has been unwavering in its effort to enhance  
3 miners' health and safety. The Commonwealth of  
4 Pennsylvania has also served as a leader in the area  
5 of miner's health and safety. In fact, we were in the  
6 vanguard when we enacted the Bituminous Coal Mining  
7 Laws of Pennsylvania back in 1961. The federal  
8 counterpart to this state law was not enacted until  
9 tragedy focused our nation's attention. Indeed, it  
10 was the 78 deaths at Farmington, West Virginia that  
11 led the United States Congress to quickly pass the  
12 Coal Act in 1969. Then in 1977, Congress expanded it  
13 to other mining industries and renamed it the Mine  
14 Act. Pennsylvania's coal mining law served as the  
15 model for that federal legislation.

16           Since the Coal Act was passed, fatalities  
17 in coal mining have decreased dramatically. While  
18 over 300 miners died in 1968, the year before the Coal  
19 Act was enacted, fewer than 100 miners have perished  
20 in any single year over the last 20 years since 1985.  
21 Nevertheless, ten Pennsylvania miners have perished in  
22 coal mines just since 2001. Attached to my testimony  
23 is a copy of fatalities compiled by the Federal Mine  
24 Safety and Health Administration, MSHA.

25           While increased mechanization has meant

1 fewer miners are engaged in coal mining, the fatality  
2 rate has also dropped significantly. This is  
3 commendable, but we can and must do much better.  
4 Mining remains the second most dangerous industry in  
5 this country.

6           This nation possesses the knowledge and  
7 ability to substantially improve miners' health and  
8 safety and to reduce the fatality rate. We can direct  
9 some of the national attention generated by the Sago  
10 and Alma tragedies to enhance health and safety  
11 conditions for all coal miners today and for  
12 generations to follow.

13 Unfortunately, what happened at Sago and  
14 Alma did not really surprise me. Indeed, the  
15 underground coal industry has experienced tragedies as  
16 well as near tragedies on a recurring basis. And just  
17 the last few years the underground coal industry  
18 experienced three large-scale, well-publicized events.

19 Jim Walters Resources No. 5 mine  
20 explosions, 13 fatalities. This was a terrible series  
21 of events on the evening of September 23rd, 2001 just  
22 two short weeks after the events of 9/11. What  
23 happened there eerily echoed the Twin Towers'  
24 experience in so much as numerous rescuers also  
25 perished at this Alabama mine. In fact, 12 miners

63

1 lost their lives in the second explosion while trying  
2 to rescue a miner who had been immobilized by an  
3 explosion that had happened nearly an hour earlier.  
4 Communication problems contributed to the deaths of 12  
5 rescuers. We believe the rescuers were given  
6 insufficient and faulty information about the  
7 underground conditions and attempted the rescue  
8 without knowing the hazards they faced.

9 Quecreek. In July 2002, nine miners were  
10 trapped by water inundation in one of the  
11 Commonwealth's mines after nine others were able to  
12 escape. The trapped miners were rescued four days  
13 later. Again, communication inadequacies frustrated  
14 an easier and quicker rescue.

15 Sago Mine, 12 fatalities. On January 2nd,  
16 2006, this tragedy claimed the lives of 12 miners,  
17 while the full extent of injuries to the 13th miner,  
18 Randal McCloy, Jr. remains uncertain. Hopefully, with  
19 time we will learn all the conditions that caused and  
20 contributed to these lost lives.

21 Alma No. 1, two fatalities. Also in  
22 January 2006, not even two weeks ago, Don Bragg and  
23 Ellery Hatfield lost their lives after a conveyor belt  
24 fire caught fire, trapping them in a Logan County,  
25 West Virginia coal mine.

1           These dramatic events represent only the  
2 headline-grabbing incidents. Thousands of miners are  
3 still disabled and dying from black lung disease while  
4 other miners also die in mining accidents each year.  
5 Typically, they die one or two at a time. The roof  
6 falls, equipment failures or other accidents.

7           There are also countless near misses that  
8 occur in coal mines on a regular basis. In fact, for  
9 the period since August 2000, MSHA has records of well  
10 over 400 mine fires, ignitions, explosions and  
11 inundations that far too easily could have developed  
12 into significant disasters and fatalities. Any other  
13 incidents likely went unreported. Attached to this  
14 testimony is an overview of MSHA's data on incidents  
15 reported to that agency.

16           To illustrate the history of near misses in  
17 Pennsylvania, I will just mention a few. In  
18 January 2003, at Consolidation Coal Company's 84  
19 complex, there was a mine fire. Fortunately, nobody  
20 was killed there. Mine fires also burned in 1989 and  
21 1990 at the Mathies Mine. In 1998, a fire erupted at  
22 Marianna Mine that resulted in the mine's closure  
23 after that mine had operated since the turn of the  
24 20th Century.

25           Significantly, less than a year earlier,

1 MSHA allowed that mine to ventilate the working face  
2 of the mine with air coursed through the conveyor belt  
3 entry, a practice strictly prohibited by the Mine Act.  
4 That mine was also coursing ventilation at high air  
5 velocities in the belt entry despite a strict  
6 prohibition set forth in Section 242(c) of the  
7 Pennsylvania mining law.

8           It's worth noting that the recent fire at  
9 Alma No. 1 mine was in the conveyor belt entry. That  
10 mine was also allowed to ventilate the working face  
11 with belt air, a significant problem for health and  
12 safety, I may add. Miners Don Bragg and Ellery

13 Hatfield were trapped in the working section at that  
14 time where both died.

15 We've also had a number of mine closures  
16 that resulted from excessive methane. For example, in  
17 2003, Greene County's Emerald Mine was under a closure  
18 order after excess methane was detected in that mine's  
19 return entries.

20 In July 2001, the Maple Creek Mine in  
21 Washington County was also under a closure order when  
22 explosive levels of methane were found on the longwall  
23 face and in return entries.

24 With better regulations at both the state  
25 and federal levels, more regular enforcement, and with

66

1 support from the bottom to the top of the respective  
2 agencies charged with enforcing miners' safety and  
3 health laws and regulations, many of these accidents  
4 could have been prevented. Senseless deaths and  
5 injuries must stop. Mining will probably always be a  
6 dangerous job, but we can do a lot more than we are  
7 doing today to make it safer. Miners should not have  
8 to get sick or to risk their lives just to go to work.

9 The most basic point I wish to make today  
10 is that as a nation and as an industry, we already  
11 possess the knowledge and the ability to prevent most  
12 of the deaths that are still occurring in the coal  
13 mining industry. What is needed is a real commitment  
14 by our state and federal governments to do better.

15 For example, if the law would require  
16 additional oxygen units, self-contained self-rescuers,  
17 to be stored on a section where miners work and  
18 throughout the underground mine in addition to the  
19 self-rescuers that each miner are required to have,  
20 then miners trapped in an emergency would have a  
21 better chance of surviving.

22 Self-contained self-rescuers are what  
23 miners don to escape when noxious air fills an  
24 underground mine after a fire or explosion. They  
25 typically last for one hour. We understand that

1 miners trapped at Sago wore self-rescuers. However,  
2 there is now no state or federal requirement that coal  
3 operators store any additional oxygen units in their  
4 underground mines. We can only speculate about  
5 whether more miners would have survived Sago if  
6 additional self-rescuers had been stored underground.  
7 What we do know is that they would have had a better  
8 chance of surviving until help arrived if they had had  
9 more fresh air to breathe.

10 The Department of Environmental Protection,  
11 DEP, and its Bureau of Deep Mine Safety should  
12 implement a rule requiring additional units to be  
13 maintained in strategic locations around the mine in  
14 order to provide miners with oxygen from the deepest  
15 penetration of the mine out to the surface. No new  
16 technology is required to implement this improvement.  
17 Self-rescuers can save lives. Are they worth some  
18 modest additional cost? We submit the clear answer is  
19 yes.

20 There's also technology available today  
21 that would enable trapped miners to maintain better  
22 communications in an emergency situation. If there  
23 were a requirement for secondary telephone lines to be  
24 placed in a separate entry, that would increase the  
25 likelihood that communications could be maintained

1 between miners and those on the surface even after an  
2 explosion or other emergency event.

3 Also, if there were a requirement that  
4 operators had to place wireless communications in  
5 underground locations, this would facilitate  
6 communications during an emergency. Rescue teams rely  
7 on wireless devices while they travel underground.  
8 Their equipment is effective for distance of about  
9 1,000 feet.

10 If trapped miners could communicate with  
11 their would be rescuers, the trapped miners could  
12 provide both -- could both provide and receive

13 critical information that could assist in their  
14 survival. By not having this ability to communicate,  
15 their own rescue is hampered and rescue teams may  
16 confront additional hazards that could be avoided if  
17 trapped miners would report what they know.

18 These proposed communication improvements  
19 could be implemented easily. The United Mine Workers  
20 and DEP and the Bureau of Deep Mine Safety could  
21 quickly implement these requirements. If we can talk  
22 to people on the moon, we should be able to talk to  
23 those people who are trapped underground.

24 After the Jim Walters tragedy in Alabama  
25 and again after the Quecreek near disaster, the need

69

1 for better underground communications was crystal  
2 clear, yet neither state nor federal changes have been  
3 implemented to require these essential improvements.  
4 If we could locate trapped miners underground, we  
5 could also do a much better job rescuing them.

6 The DEP and the Bureau of Deep Mine Safety  
7 should draw on all the nation's resources to address  
8 this compelling need. We are encouraged by  
9 communications with people we have had at the Pentagon  
10 about equipment originally developed for aviation  
11 security, which might also be applicable to the mining  
12 industry. We do know that since the 1970s, there has  
13 been electromagnetic technology available that would  
14 enable us to locate trapped miners underground.

15 The then Bureau of Mines reported about  
16 this commitment in the 1970s. Equipment was tested  
17 and deemed reliable some 30 years ago. Why then  
18 aren't we using it today? The DEP and Bureau of Deep  
19 Mine Safety should take a look at this electromagnetic  
20 technology and all other available technology to see  
21 which one should be required throughout this industry.

22 Another way to enhance the chances of  
23 survival for trapped miners is to strengthen and  
24 expand mine rescue teams. At the Sago Mine on  
25 January 2nd, it was between three and five hours

1 before the first mine rescue teams arrived. Once mine  
2 rescue teams arrived on property, including six teams  
3 comprised of United Mine Workers members, the sole  
4 activity they engaged in revolved around safely  
5 extracting the trapped miners.

6 It is extremely important for you to  
7 understand that procedures followed during these mine  
8 rescues are designed to save the lives of trapped  
9 miners while also protecting the team members.  
10 Rushing into a mine without the complete understanding  
11 of its conditions would be inviting additional  
12 problems.

13 You need only review mining history briefly  
14 to see examples of rescuers rushing in, only to become  
15 additional victims. We cannot permit that to occur.  
16 Even if underground conditions may not have allowed  
17 the rescuers to immediately travel underground at  
18 Sago, the three to five hours lapse before the first  
19 teams arrived constituted valuable time that was  
20 simply forfeited. A three- to five-hour lag before  
21 mine rescue teams arrived is unacceptable.

22 The Mine Workers submit that every  
23 underground coal mine should have mine rescue  
24 capabilities on site. These team members should be  
25 employees of the facility who would be acutely

1 familiar with the mine. These individuals would not  
2 only best be able to carry out many of the duties  
3 required in these situations, but would also be  
4 uniquely qualified to brief additional on-site teams  
5 that may be necessary to complete the rescue.

6 For even small and remote mines, mine  
7 rescue teams must be ready when disaster strikes. The  
8 state law and regulations must ensure that trapped  
9 miners never again have to wait three to five hours  
10 for rescue efforts to begin.

11 While we all share the hope that all mining  
12 accidents will cease, all of our hopes probably won't

13 prevent more accidents from happening. What we can do  
14 and what we should do is to give miners their best  
15 chance at surviving a mine emergency. I've just  
16 described a number of improvements that would be easy  
17 to implement. They would also go a long way to  
18 furthering miners' abilities to survive disasters.  
19 However, less federal and state agencies require that  
20 these improvements be implemented throughout the  
21 industry. Miners will continue to face emergencies  
22 from a position of compromise.

23 If the Sago miners had been able to  
24 communicate with persons on the surface and mine  
25 rescue teams underground, those miners may have been

72

1 successfully led to fresh air. If the location of  
2 those trapped miners could have been more quickly  
3 determined, we could have enhanced the possibility of  
4 their rescue. These only ifs are too late to change  
5 happened at Sago and Alma, but it would be inexcusable  
6 if our inaction now would contribute to any more  
7 deaths.

8 There was a national outcry when 78 miners  
9 died in West Virginia in 1968. Unfortunately, after  
10 the Jim Walters' disaster and the recommendations made  
11 from the lessons there, no lasting improvements to  
12 miners' safety and health came after those 13 miners  
13 perished. We cannot allow that to happen again. Now  
14 is the time to make real changes so that another  
15 tragedy like what happened in Jim Walters and those  
16 that happened at Sago and Alma mines will not happen  
17 again.

18 This Commonwealth has the opportunity to  
19 again lead the nation in the area of miners' health  
20 and safety. Further, the DEP and the Bureau of Deep  
21 Mine Safety cannot count on the federal enforcement  
22 mechanism to protect our miners. MSHA's performance  
23 has been disappointing on too many occasions. That  
24 agency has performed countless internal reviews and  
25 self-analyses. The federal government's watchdog

1 agency, the GAO, has given it direction, and the UMWA  
2 has communicated both formally and informally about  
3 how MSHA can and must do better.

4 SENATOR MARY JO WHITE: Mr. Yankovich,  
5 excuse me, could I interrupt you for a moment?

6 MR. YANKOVICH: Sure.

7 SENATOR MARY JO WHITE: I notice the next  
8 several pages of your testimony are a critique and  
9 criticism and possibly a valid one of MSHA. However,  
10 that's not really the subject of our hearing today,  
11 and I really want to hear more about your  
12 recommendations for Pennsylvania. So I wonder if we  
13 could pick it up perhaps at Page 9 when you start  
14 talking about West Virginia's activities so we can  
15 hear what they have done.

16 I'm not trying to -- This will all be part  
17 of the record.

18 MR. YANKOVICH: Sure, absolutely.

19 SENATOR MARY JO WHITE: Which everyone will  
20 have the opportunity to read. But we're sort of  
21 behind schedule.

22 MR. YANKOVICH: I understand.

23 SENATOR MARY JO WHITE: So if we could lead  
24 off with state activities, that would be great.

25 MR. YANKOVICH: Well, sure. I believe you

1 wanted me to pick up with, I wish to commend the West  
2 Virginia Legislature.

3 SENATOR MARY JO WHITE: That would be very  
4 interesting to the committee.

5 MR. YANKOVICH: Fine. For taking immediate  
6 action by passing emergency legislation regarding the  
7 availability of additional oxygen, emergency response  
8 and enhanced communications. It took them less than a  
9 single day to complete this task. I have attached a  
10 copy of that legislation.

11 As we gather here today, similar  
12 initiatives are being pursued in other coal mining

13 state legislatures. This legislative body can and  
 14 should also demand that regulations be written to  
 15 ensure that we can locate and communicate with miners  
 16 in an emergency, that trained mine rescue teams be  
 17 available on site and that miners be provided with  
 18 supplemental oxygen throughout the mine. Now that the  
 19 spotlight is on the issues of miners' program and  
 20 safety, we have a unique opportunity to make  
 21 significant improvements. Pennsylvania miners deserve  
 22 the same protection that the West Virginia legislature  
 23 enacted just last week.

24 The status quo is inadequate. The  
 25 government failed the Sago and Alma miners, and when

75

1 it failed them, it failed all miners. As Congress  
 2 plainly stated when it enacted the Mine Act, "Congress  
 3 declares that the first priority of all in the coal or  
 4 other mining industry be the program and safety of its  
 5 most precious resource B the miner."

6 The Commonwealth's law is just as direct.  
 7 Section 104(a) specifically commands the Secretary of  
 8 Mines and Mineral Industries "to protect the health  
 9 and promote the safety of all persons employed in and  
 10 about the mines." We take these admonitions  
 11 seriously. Everyone else associated with the mining  
 12 industry must reestablish miners' program and safety  
 13 as their top priority, too.

14 I thank you for your interest in miners'  
 15 safety and would be happy to answer any questions.

16 SENATOR MARY JO WHITE: Thank you. Did you  
 17 hear Secretary McGinty's testimony about establishing  
 18 in Pennsylvania a Mine Safety Board that would have  
 19 the authority to promulgate regulations?

20 MR. YANKOVICH: Yes, I did.

21 SENATOR MARY JO WHITE: Do you think that  
 22 would address some of your concerns if in fact that  
 23 Mine Safety Board could promulgate regulations, and,  
 24 as has been I think indicated up here, perhaps go  
 25 through the regulatory process with good public input?

1 MR. YANKOVICH: Yes, I believe we certainly  
2 are not opposed to the establishment of a board. We  
3 will be a strong advocate that the board be not biased  
4 in any manner, so that there would be an equal amount  
5 of representation from the industry, from the  
6 Department and from the representatives of the miner,  
7 which is the union.

8 SENATOR MARY JO WHITE: Questions? Senator  
9 Musto.

10 SENATOR MUSTO: Thank you, Senator. In  
11 your testimony, you make recommendations to strengthen  
12 and expand mine rescue teams and also training and  
13 retraining of miners should be updated and approved.  
14 Now, the provisions are in the bill as written.

15 Do you feel as the bill is written your  
16 recommendations are adequately covered in Senate Bill  
17 949 or should be -- should it be amended to do more?

18 MR. YANKOVICH: Well, I guess, Senator,  
19 that the simple answer to that for the mine workers  
20 is, you know, whatever can be done to enhance the  
21 safety, anything additional is something we would  
22 agree to. However, yes, the bill does address those  
23 issues as -- and certainly we're pleased with the way  
24 the bill has addressed issues and has enhanced that  
25 from the previous legislation.

1 SENATOR MUSTO: Very well. If you have any  
2 additional recommendations, you can certainly submit  
3 them to the committee.

4 MR. YANKOVICH: Yes, yes.

5 SENATOR MUSTO: Thank you.

6 SENATOR MARY JO WHITE: Senator Stout?

7 SENATOR STOUT: Yes, thank you, Madam Chair  
8 Lady. Ed, one of your colleagues, Clemmy Allen, who  
9 was involved in the UMW training program had recently  
10 made a request to the Pennsylvania General Assembly  
11 and to the governor for a capital budget grant to  
12 create a coal mining training facility in the coal

13 fields of Greene and Washington County.

14           Could you tell this committee what would be  
15 the goals of that training program and how it can  
16 improve and train miners for the safety in the future  
17 in mining?

18           MR. YANKOVICH: Yes, Senator, I would be  
19 more than happy to. I think the Secretary in her  
20 testimony had alluded to the fact that there has been  
21 a generation of miners lost, and that's clearly  
22 clearly true. And that's not the first time that this  
23 has happened. Quite frankly, due to technological  
24 changes primarily, that was the cause of that. That  
25 was the cause of that in a generation prior to my

78

1 generation. When I started in the industry, it was a  
2 generational shift and there was a generation lost  
3 then. Now that's going to happen again.

4           What we experienced when my generation  
5 started in the early '70s and mid '70s was a severe  
6 upswing in accidents and certainly in fatalities. We  
7 don't want to see that happen again. So that mine  
8 workers has -- It's moved forward with the  
9 establishment of certain we hope to with the training  
10 school.

11           And we have partnered with Foundation Coal,  
12 who has a representative here today, in doing that  
13 matter. We are looking at establishing that school in  
14 Greene County, and certainly we envision it to work  
15 basically like trade schools do for the building  
16 trades, that we will be able to through certainly  
17 practical experience and through training provide a  
18 new generation of miners that will be better  
19 acclimated to the industry than we were when my  
20 generation did it.

21           SENATOR STOUT: One additional question,  
22 Madam Chair Lady. There's been a difficult history in  
23 the coal industry between the union and between the  
24 companies going clear back to the days of Molly  
25 Mcguire in northeastern Pennsylvania and continuing

1 through the national coal strikes.

2 Now, right now we need to get everybody to  
3 the table. Now you know what I mean when I say I  
4 don't want to see the union dump their water and go  
5 home, like it used to be years ago when they went out  
6 on strike with work stoppages. Is everybody willing,  
7 the UMW, to cooperate with the DEP and the industry to  
8 try to address these safety challenges in the  
9 industry?

10 MR. YANKOVICH: Senator, let me say in the  
11 past recent years, we have worked together with the  
12 industry and the DEP. We have been able to sit down  
13 successfully, write the rules, and agree upon for the  
14 regulation of diesel equipment, for example, in the  
15 underground mines in Pennsylvania for reciprocity as  
16 far as mining papers. So we have been able and  
17 certainly willing to. And the United Mine Workers  
18 stands ready and willing to sit and meet at any time  
19 with the industry and welcome that opportunity.

20 A lot has changed in the past 100 years, I  
21 would like to think, since the days of Molly Mcguire  
22 and since the days of the anthracite strike and since  
23 the days of John Mitchell and George Bare, and I would  
24 like to think that we've progressed for the positive.  
25 And I think that we certainly owe that to the miners,

1 that we all work together along with the Commonwealth  
2 to provide for their safety and not provide an  
3 atmosphere of anguish and provide an atmosphere that's  
4 counterproductive to all.

5 SENATOR STOUT: Thank you, Mr. Yankovich.

6 SENATOR MARY JO WHITE: Thank you very much  
7 for being here today.

8 MR. YANKOVICH: Thank you, Senator.

9 SENATOR MARY JO WHITE: George Ellis,  
10 president of the Pennsylvania Coal Association. Mr.  
11 Ellis.

12 SENATOR MUSTO: Here's a Molly Mcguire

13 coming up now. Oh, are we on?

14 MR. ELLIS: We're on, so watch it.

15 Good morning, Chairman White, Senator  
16 Musto, the Senator's staff. My name is George Ellis.  
17 I'm president of the Pennsylvania Coal Association.  
18 As you know, PCA is a trade association representing  
19 bituminous coal operators and associated industries.

20 With me today is --

21 SENATOR MARY JO WHITE: Mr. Ellis, is your  
22 green light on on your microphone?

23 MR. ELLIS: Yes, ma'am.

24 SENATOR MARY JO WHITE: Pull it a little  
25 closer.

81

1 MR. ELLIS: With me today is the safety  
2 directors of Pennsylvania's two largest coal  
3 companies. On my left is Elizabeth Chamberlain with  
4 Consol Energy. On my right is John Gallick with  
5 Foundation Coal. Also accompanying us, sitting in the  
6 front, is Hank Moore, an attorney with Jackson Kelly,  
7 who is our counsel on mine health and safety issues.

8 We thank the committee for this opportunity  
9 to provide our perspective on mine safety and health  
10 improvements to Pennsylvania law. Before we proceed,  
11 like others, we want to extend our deepest sympathies  
12 to the Sago and the Alma mine communities and to those  
13 who have lost so much. With them we mourn for those  
14 who lost their lives and pray for a speedy and  
15 successful recovery for Randal McCloy, Jr.

16 Because of the time and the fact that a  
17 number of prior speakers kind of addressed some of the  
18 information that we were going to provide, I'm going  
19 to skip around, but just ask that the speech be -- the  
20 testimony be included fully in the record.

21 SENATOR MARY JO WHITE: We will.

22 MR. ELLIS: The four points I wanted to  
23 make today are, one, Pennsylvania's underground coal  
24 mines are among the safest in the country. Two,  
25 significant changes have been adopted and implemented

1 in Pennsylvania that address the Quecreek  
2 recommendations.

3 Chart five shows trend lines would support  
4 the first point -- excuse me, chart -- yes, chart  
5 five. And, also, I looked at Secretary McGinty's  
6 testimony, and I think what she said echoes what we're  
7 saying. So unless there's any questions that go  
8 beyond that.

9 As far as Quecreek is concerned, again,  
10 Dave, Secretary Hess, former Secretary Hess, did a  
11 good job on that. I do call your attention to  
12 Attachment 2 where we include a summary of the  
13 technical guidance document, in which the  
14 recommendations from the Quecreek investigative panel  
15 were codified and are being implemented now.

16 The third point I want to talk about is  
17 that there's always room for improvement in our laws  
18 and regulatory standards governing mine health and  
19 safety, and within that context, Pennsylvania's safety  
20 law should be updated. We support any updates to  
21 modernize our laws. We'll talk about our approach and  
22 our recommendations on how to bring about change.

23 And, finally, we stand ready to work with  
24 labor, state legislators and regulators to help bring  
25 about these new changes.

1 If you'd bear with me, I'd like to talk  
2 about what happened right after Quecreek. As I said,  
3 most of the site specific Quecreek recommendations  
4 were adopted and have been implemented. One general  
5 recommendation that was not adopted involved updating  
6 Pennsylvania's mine safety law. And this was not  
7 because of lack of interest or lack of action, believe  
8 me. All parties agreed that the time was right to  
9 modernize the law. The problem was that all shared  
10 different perspectives on how to go about doing this.

11 The negotiations on the amendments to the  
12 state law actually began in December of 2003 when

13 Secretary McGinty convened a meeting with  
14 representatives of PCA and the UMW to see if the  
15 parties shared a common vision on how to proceed. An  
16 agreement was reached to give PCA and the union time  
17 to meet privately and determine if a labor management  
18 initiative could be developed. In the interim, DEP  
19 would begin drafting amendments on its own.

20 When negotiations between PCA and the union  
21 broke down in the spring of 2004, DEP had finished its  
22 rewrite and shared the draft with both parties. Since  
23 the organizations had serious concerns with the  
24 Department's version, we decided to resurrect our  
25 negotiations. The Department decided to have its

84

1 proposal introduced. This committee, DEP,  
2 Representative Bastian, who sponsored the bill in the  
3 House, are all to be commended for launching this  
4 public policy discussion on the appropriate way to  
5 modernize Pennsylvania's mine safety laws.

6 Before we get into our alternative, we want  
7 to talk a little about the Senate Bill 949.  
8 Unfortunately, we oppose the bill. There are number  
9 of reasons for it. Instead of making Pennsylvania's  
10 program more consistent with the modern federal  
11 program and creating a more uniform process, it would  
12 in some cases expand the differences between the two  
13 programs and in other cases increase the duplication  
14 of effort.

15 The proposed amendments do nothing to  
16 clarify the regulatory environment for coal operators.  
17 To the contrary, the amendments continue to foster the  
18 existing inconsistencies between state and federal  
19 schemes. The amendment team or -- In drafting the  
20 bill, there doesn't seem to be any attempt -- didn't  
21 seem to be any attempt by the authors to mesh both the  
22 state and federal regulatory programs. In one part of  
23 the bill, it seeks authority to approve every plan,  
24 process, tool and equipment. It's not an  
25 embellishment. That language is lifted right from the

1 bill. And the problem we have with this is that in  
2 drafting their bill, there was no -- apparently no  
3 attempt to compare what MSHA is doing and what the  
4 Department is trying to achieve under this bill.

5 For example, if you take ventilation plans  
6 that are currently approved by MSHA, one would  
7 logically say, what's the MSHA process for approving  
8 ventilation plans? The next question would be, what  
9 would the state process be if giving authority for  
10 approving the plans? And would the state process  
11 bring something to the table, additional expertise,  
12 beyond what the federal program is doing? Our answer  
13 is no. Our answer is no in a lot of these areas, but  
14 it just doesn't seem that that type of evaluation is  
15 done in drafting the bill.

16 So make no mistake, this Coal Association  
17 and my companies are for updating the act and for  
18 bringing about meaningful reform. Frankly, we think  
19 this bill is more about control than it is about  
20 promoting client health and safety. The civil penalty  
21 sanction proposals are unnecessarily severe. Public  
22 nuisance categorizations, exorbitant maximum civil  
23 penalty amounts, mandatory penalty provisions for  
24 individuals, mine officials and operators, a 20-year  
25 statute of limitation, these are all examples of the

1 harsh, overreaching and punitive amendments being  
2 proposed. Amendments aimed at holding operators  
3 responsible for contractor violations are misguided,  
4 inconsistent with federal regulations and contrary to  
5 common law principles governing workplace and  
6 employees.

7 There's been some talk about the structure  
8 of the rulemaking. I have perhaps a more  
9 Machiavellian interpretation of this. All I need in a  
10 setup where there's three votes is to attract one  
11 other vote, and I can disregard the feelings or the  
12 positions of the third party. Given the fact that

13 there is no -- that the bill excepts itself from the  
14 regulatory review process, that could be a very, very  
15 chilling thing.

16 The powers seem to be unprecedented in  
17 terms of changing provisions of law by regulation and  
18 address areas not contemplated by in the Act by  
19 rulemaking. The mapping survey standards are  
20 unrealistic, impractical, confusing and unnecessary.

21 There's one other significant concern that  
22 we have with the bill, and that's the manpower cost  
23 component. As written, DEP would be reviewing and  
24 approving every plan, process, tool and equipment that  
25 the industry purchases or uses. In addition, Section

87

1 108 implies that the state will be involved in health  
2 hearings. Finally, legal costs and time, including  
3 inspectors needed to testify, will increase as  
4 penalties the size of those proposed in Article 4 are  
5 litigated.

6 Appeals of DEP decisions are likely to  
7 increase, particularly given how broadly the bill is  
8 written. Without the proper staff complement to  
9 implement 949, permits and plan approval decisions are  
10 likely to be delayed. As an alternative, PCA  
11 respectfully asks the committee to consider its  
12 proposal contained in Attachment 4. Our bill  
13 essentially by reference replaces most provisions of  
14 state law with corresponding provisions of the federal  
15 program.

16 This is an approach similar taken by the  
17 Pennsylvania Industrial Mineral Industries and  
18 supported by the Department when that industry  
19 upgraded its regulatory standards. This approach will  
20 ensure consistency with application and enforcement by  
21 moving towards a more uniform program, provide  
22 operators with a sense of certainty in what is  
23 required for compliance and eliminate the confusion  
24 and unnecessary duplication inherent with a dual  
25 regulatory program. DEP will continue its inspection

1 and enforcement roles along with federal inspectors,  
2 but disparity between the two programs would be  
3 greatly reduced.

4           Again, I want to emphasize, some of the  
5 prior speakers and some of the criticism in  
6 Washington, D.C. has been leveled against an alleged  
7 lax enforcement by MSHA. Everybody is generally in  
8 agreement that the MSHA law and programs are effective  
9 and adequate in terms of ensuring mine safety. Our  
10 bill in most cases would take the federal program, the  
11 federal regulations, but will still retain the Bureau  
12 of Deep Mine Safety's enforcement authority, so there  
13 will still be a dual level of enforcement and  
14 inspection in Pennsylvania. It will still be a state  
15 and federal program.

16           Where we see a benefit is you have a more  
17 unified program for both the state and federal  
18 inspectors who are operating under this off the same  
19 page, where operators have a better understanding of  
20 what we have to do to comply. But there's still going  
21 to be a state inspection enforcement component with  
22 our proposal.

23           We also allow the Department to level civil  
24 penalties against operators. The amount and structure  
25 of the fee system is patterned after MSHA's. In

1 addition, it contains consensus amendments developed  
2 by PCA and the UMWA on a number of issues, including  
3 changes to the diesel section, modifications to the  
4 provisions governing certification of miners and other  
5 skilled positions and a new section on reciprocity  
6 that would recognize certification of workers in other  
7 states provided those states have a certification  
8 program comparable to Pennsylvania.

9           We can make the consensus amendment to  
10 these provisions available to the committee if you  
11 would like in a separate bill. Again, the bill is  
12 still a work in progress. We would like to sit down

13 and discuss an alternative to the Environmental  
14 Hearing Board as a first step in the judicial review  
15 process. And also talk a little more about what the  
16 regulatory mechanism would be in Pennsylvania that  
17 once the federal regs are adopted they're deemed to be  
18 approved in Pennsylvania, but we still think there  
19 should be some type of regulatory review and some type  
20 of Pennsylvania oversight to ensure that there is  
21 nothing lacking in the reg in terms of a specific  
22 Pennsylvania problem. But if the committee is  
23 interested in this legislative approach, PCA stands  
24 committed to further discussions.

25 With respect to the West Virginia

90

1 legislation, I've gotten a number of calls from House  
2 members and Senators over the past week. As you know,  
3 the West Virginia legislature and governor signed into  
4 law a package to address and perceive deficiencies and  
5 emergency response and rescue procedures. Basically,  
6 I outlined the law and the three principal components.  
7 This includes PCA's very preliminary assessment on the  
8 West Virginia law. Really the details are going to be  
9 in the rulemaking and they are working that out now.

10 These are some of the concerns we have,  
11 although, again, we fully support the development and  
12 use of new mining technology that performs reliably in  
13 effectively a new mining environment and we are  
14 prepared to work with this committee that seeks to use  
15 West Virginia law as a template for similar amendments  
16 to the Pennsylvania law.

17 It should also be noted that in West  
18 Virginia accidents have also watched national reviews  
19 to assist the status of mine safety technology. The  
20 National Mining Association recently announced the  
21 creation of an independent commission. In addition,  
22 MSHA recently published a request for information in  
23 the Federal Register soliciting information on issues  
24 related to mine rescue equipment and technology.

25 In conclusion, PCA is committed to work in

1 a collaborative process with labor lawmakers and the  
2 administration in establishing clear, effective and  
3 meaningful changes to Pennsylvania's mine safety law  
4 that advance the protection of our workers in the  
5 working environment. Thank you. We'll be happy to  
6 try and answer your questions.

7 SENATOR MARY JO WHITE: Well, I guess my  
8 preliminary question is while I'm interested in your  
9 comments, particularly your critique of the West  
10 Virginia law, which anything that gets put together in  
11 the legislature in one day is probably not really  
12 great, but we're at the other end of it. This has  
13 been several years' delay in getting this done. And  
14 my understanding was that the reason for the delay was  
15 the Secretary's desire for this to be a consensus bill  
16 between the industry and the mine workers.

17 Obviously, that did not happen. I can't  
18 imagine that we are willing to go back to the drawing  
19 board and start from scratch. I think we are going to  
20 have to work with the bill that is before us and look  
21 at the areas in that bill that are of the greatest  
22 concern to you. And you outlined a few at the  
23 beginning of your testimony.

24 I think that we -- I'm getting the sense  
25 from this committee that is there some concern about

1 the powers of this Mine Safety Board and the way in  
2 which they would be permitted to adopt regulations  
3 without going through the regular regulatory process.  
4 I know that was one of your concerns.

5 The fines and penalties, I heard Secretary  
6 McGinty say, I thought, that current law did not  
7 permit penalties to be assessed against the owner of  
8 the mine. I was very surprised to hear that. Is  
9 that, in fact, current law?

10 MR. ELLIS: That's correct. In the state,  
11 right.

12 SENATOR MARY JO WHITE: Well, you know, in

13 a lot of other contexts in industries and businesses,  
14 we do charge an owner with a certain level of  
15 responsibility for making certain that persons under  
16 his direction are doing what they are supposed to do.  
17 We put CEOs, chief financial officers, on the spot all  
18 the time by having to sign assurances that all of this  
19 is accurate and correct, and there are serious fines  
20 and penalties if, in fact, that representation is not  
21 true.

22 So it seems to me that it is not completely  
23 inappropriate to look at that and consider whether an  
24 owner of a mine has some responsibility to make sure  
25 that the persons working under his direction and that

93

1 he hires are, in fact, performing their  
2 responsibilities suitably, particularly when it comes  
3 to health and safety issues. And if they're not and  
4 if he's not exercising sufficient oversight that a  
5 fine or penalty would be appropriate as opposed to  
6 simply fining the mine inspector.

7 So I think there are some areas where if  
8 you can give a little, perhaps we can give a little  
9 and come up with something where it may not be the  
10 perfect consensus document. But I don't think it's  
11 going back to the drawing board and starting from  
12 scratch, because too much time has passed.

13 MR. ELLIS: I understand, but I want to  
14 make sure you understand. There was no collaborative  
15 process in the drafting of Senate Bill 949.

16 SENATOR MARY JO WHITE: No, I understood  
17 you to say that went on a separate track while your  
18 negotiations were underway.

19 MR. ELLIS: That's correct. And they were  
20 aware of the breakdown in negotiations back in the  
21 spring of 2003. So, I mean, I don't want this  
22 committee to think that it was in any way our attempts  
23 to negotiate with the UMW that delayed either  
24 introduction or consideration of this legislation by  
25 the committee today.

1           SENATOR MARY JO WHITE: Well, I think it  
2 would be helpful to us to have, since we're working  
3 from Senate Bill 949, in addition to your rather  
4 general comments up front and the four points you  
5 wanted to make, if you could give us a more specific  
6 critique of 949 on the specific provisions. I mean,  
7 rather than say we think it should all agree with the  
8 federal regs.

9           MR. ELLIS: We have that in Attachment 3  
10 for comments.

11           SENATOR MARY JO WHITE: Okay, I have not  
12 been through that entire category.

13           MR. ELLIS: It's a section by section that  
14 lists our concerns with the bill. I think it's about  
15 37 pages.

16           SENATOR MARY JO WHITE: Okay, that's what  
17 this is then.

18           MR. ELLIS: That's correct.

19           SENATOR MARY JO WHITE: Okay, thank you,  
20 then you've already done that. Thank you very much.

21           Questions? Senator Stout.

22           SENATOR STOUT: Yes, Madam Chairman. Thank  
23 you, George. I realize that following the erosion of  
24 the steel company and the coal production industry  
25 that the industry fell on some difficult financial

1 challenges after that, and it was -- didn't maybe have  
2 the financial resources. I understand that today's  
3 coal market that there are sufficient resources. And  
4 hearing the other testimony today, there's new  
5 technologies and new recommendations improve safety.

6           Is there any way that there's not financial  
7 resources available in the coal industry to put in  
8 place new technologies and new safety programs?

9           MR. ELLIS: I mean, I'll talk unless you  
10 guys want to answer. One of the things that we're  
11 looking to is the National Mining Association, which  
12 is the national association that represents coal

13 companies, has created a special commission of labor  
14 and management, active commissions, to take a look at  
15 the whole technology issue and is supposed to come out  
16 with its recommendations I think in the early part of  
17 the summer.

18 MR. GALLICK: Our biggest concern is that  
19 some of the new technology that's being discussed is  
20 not either proven technology -- in other words, it has  
21 not been used -- or it does not meet some of the  
22 requirements that some people are claiming it would  
23 meet.

24 A lot of our operations operate with two  
25 different communication systems now, but both of them

96

1 are dependent upon power in the mine. Those things  
2 that we have reviewed and, frankly, some preliminary  
3 review of all the communication systems available all  
4 require some type of antenna or communication system.

5 There are people saying that they can do it  
6 from the surface, the electromagnetic discussion that  
7 Mr. Yankovich mentioned. In 1970s when it was done,  
8 it had roughly a two-thirds success rate. In other  
9 words, two out of three times it would work. I'm sure  
10 there's work that could be done there in research and  
11 development, but it's not a technology that's off the  
12 shelf ready to be used and be a standard.

13 So that is really one of our core concerns,  
14 is that we move forward in these areas with an  
15 understanding of what the technology truly is and not  
16 what someone says it may be.

17 SENATOR STOUT: Well, can you tell this  
18 committee how you would go reviewing the new  
19 technologies and having them tested and approved and  
20 recommended for use in the mining industry? How do  
21 you propose to do that?

22 MR. GALLICK: Well, part of it is what  
23 George said is the NMA has formed a blue ribbon  
24 commission, and that's part of their responsibilities,  
25 is to look at all the technology that's available. In

1 addition to that, each major coal company that I'm  
2 aware of has formed their own subcommittees, their own  
3 committees, I should say, to look at the different  
4 type of technologies, some of which we already have in  
5 place where we're using some of them and to get a much  
6 better understanding of the value of them and its  
7 positives and negatives. Like anything else, they all  
8 have positives, they all have negatives, so we  
9 understand that. That's ongoing, that's been ongoing,  
10 frankly, since Sago.

11 MR. ELLIS: Senator, I mean, you had made I  
12 think a suggestion to Secretary McGinty this morning  
13 about a state advisory board to make sure we're on top  
14 of technology. I mean, I think that's something that  
15 we can take a look at and see as a real positive.

16 MS. CHAMBERLAIN: Let me also add that  
17 currently there is a lot of activity going on in the  
18 health and safety arena in partnership activities  
19 between operators, the mine workers, NIOSH and the  
20 Mine Health and Safety Administration. NIOSH has been  
21 a leader in those efforts. They are the former  
22 Bruceton component of MSHA. They have a strong  
23 technical background. They have the ability to assess  
24 a lot of the technology that we've seen coming out of  
25 the woodwork just recently.

1 Now, all of this technology is very  
2 interesting to us and we are assessing it all, but it  
3 needs to be assessed in a very systematic fashion,  
4 taking into consideration the circumstances that we  
5 have in underground coal mining so that we are sure  
6 that it doesn't give false hope to our employees  
7 underground as to what it is going to be able to  
8 provide in the way of emergency communications or  
9 detection.

10 So I would strongly suggest that we provide  
11 additional support for NIOSH to move forward with the  
12 investigations into this area, as well as supporting

13 the panel that has been put together by the National  
14 Mining Association.

15 SENATOR MARY JO WHITE: Are you saying that  
16 you don't think this is an appropriate area for state  
17 activity?

18 MS. CHAMBERLAIN: Oh, I think the state  
19 needs to be involved in it. I certainly do. I'm  
20 saying that we have a group out there and with NIOSH  
21 that has skilled people in place. It can be a  
22 tremendous resource for the state. And I would  
23 strongly recommend that the state partnership with  
24 NIOSH, as labor has done, as the operators have done,  
25 and as MSHA has done.

99

1 They have provided over the years very,  
2 very good technical input and they are actively  
3 developing a number of initiatives in the area of  
4 health and safety that will be of long-term benefit to  
5 the underground bituminous mining community.

6 SENATOR MARY JO WHITE: Mr. Ellis, to go  
7 back to one comment, you indicated -- to put it  
8 simply, I understood you to say that we should more or  
9 less adopt the federal mining standards and give the  
10 state the job of enforcing them. But I heard  
11 Secretary McGinty say that the federal standards,  
12 MSHA, mainly regulated at the face and that there were  
13 many other areas of the mine involving health and  
14 safety where there were no federal regulations.

15 MR. ELLIS: That's not -- That's really not  
16 what she said and in terms of the limited parts of the  
17 equipment approval, which I think she was talking  
18 about, the outline.

19 I'll let John address that, but, no, there  
20 are -- The federal regulations would encompass our  
21 coal mines. If there are certain provisions in the  
22 state that need to be retained, we certainly -- you  
23 know, that's the stuff we want to sit down and talk  
24 to. In fact, we kept our diesel provisions of the  
25 state one in our bill, because they were promulgated

1 by the legislature in '94, so they were not only mine  
2 modern, but they were effective, and they were also  
3 more stringent than the federal proposal.

4 But, go ahead.

5 MR. GALLICK: I'm just going to clarify  
6 that what Secretary McGinty was referring to was the  
7 electrical equipment approval process where the  
8 federal approves in by equipment or permissible  
9 equipment. They do approve some other parts of the  
10 electrical systems out by in the nonexplosive area,  
11 but in general, they don't.

12 The state's electrical approval system  
13 includes that area. The Federal Register is the  
14 complete regulatory requirements for all the mine from  
15 the bathhouse to the face requirement, extensive  
16 requirements, all of whom are enforced by the federal  
17 agency. And if our proposal would go forward, they  
18 would also be enforced by the state agency.

19 SENATOR MARY JO WHITE: Thank you, I'm glad  
20 that's clarified. Senator Musto.

21 SENATOR MUSTO: Thank you very much,  
22 Senator.

23 I commend Senator Kasunic for bringing this  
24 attention and certainly introducing Senate Bill 949.  
25 But after what I am hearing here this morning, I could

1 tell you that people want updated health and safety  
2 laws regarding mining. The message is very clear to  
3 this legislature. And when you tell -- when you tell  
4 this committee there are blue ribbon committees  
5 studying the problem and other committees, well, my  
6 message to you is they don't have time to study the  
7 problem for many weeks or many months into the future.

8 This legislature is ready to move because  
9 of the requests that people are making to us. So my  
10 message is, United Mine Workers, your coal mining  
11 industry and everyone involved, you better come  
12 forward with your recommendations and let's start

13 working on a bill that's going to be satisfactory more  
14 or less, because Senate Bill 949 and the House bill  
15 will be ready to move. I have chaired the  
16 Environmental Committee for about 20 years or so, and  
17 what I see here, 949 will move with or without help  
18 from industry, union or any other blue ribbon  
19 committee.

20 MR. ELLIS: Senator, the blue ribbon  
21 committee, if I may respond, was in reference to a  
22 question on technology. There is nothing in Senate  
23 Bill 949 that will address what's in the West Virginia  
24 law, just so you know that.

25 SENATOR MUSTO: Well, then I suggest you

102

1 come forward and give the committee recommendations  
2 and let us start working on it.

3 MR. ELLIS: I will.

4 SENATOR MUSTO: Without a good  
5 communication, it's going to be impossible.

6 SENATOR MARY JO WHITE: I believe Senator  
7 Kasunic was going to address some of those West  
8 Virginia issues in a separate piece of legislation, is  
9 my understanding.

10 MR. ELLIS: We'd like to work with you,  
11 Senator.

12 SENATOR KASUNIC: Currently, yes, and  
13 George, you and I had some discussions on that last  
14 week and certainly you're well aware of my ideas in  
15 terms of moving forward with that. As I said in my  
16 opening statement, certainly this is a work in  
17 progress. We're willing to compromise. Nobody is  
18 saying that this piece of legislation is set in stone.  
19 We're willing to work with the industry, we're willing  
20 to work with United Mine Workers of America,  
21 regulators, and this committee to fashion a bill that  
22 will protect men and women who earn their living  
23 underground.

24 But I agree with Senator Musto, we do not  
25 have time to languish and continue to meet, to hold

1 additional hearings, to have other special committees.  
2 You know, we have waited three and a half years. It's  
3 been three and a half years since Quecreek. We have  
4 done nothing at all. We've been waiting for those  
5 reports, all those studies and whatnot.

6 Finally, we have a piece of legislation  
7 before us that is ready to move. I would suggest that  
8 we work together in the spirit of cooperation, but we  
9 don't have time. We do not have time for another six  
10 months, for another year. We have to move and we have  
11 to move quickly. And I invite you to participate with  
12 us, to work with us. This committee, myself, we're  
13 willing to work with you and to work with anybody who  
14 has any thoughts and ideas how we can improve safety  
15 in coal mines. But we do not have time to prolong  
16 this and wait any longer. We have to develop this  
17 legislation and develop whatever we need to do, but we  
18 need to do it quickly. It's an issue whose time has  
19 come and we're way too late as it is.

20 1961 -- 1961 was the last time we addressed  
21 this issue. You know, we've talked about this, about  
22 how technology, how modern mining technologies have  
23 changed. We have not kept up with it and we have to  
24 move forward with it.

25 MR. ELLIS: And we agree.

1 SENATOR KASUNIC: We had a grand jury, we  
2 had a grand jury investigation. We had a special  
3 commission formed by the governor to investigate the  
4 problems with deep mine safety and particularly the  
5 issues that -- the near tragedy that took place at  
6 Quecreek. Three and a half years later, we're still  
7 talking about those things.

8 MR. ELLIS: That's not correct, Senator.

9 SENATOR KASUNIC: We cannot wait any  
10 longer.

11 MR. ELLIS: We have -- Most of the specific  
12 Quecreek recommendations have been implemented either

13 by executive order of Governor Schweiker or an  
14 abandoned technical guidance document that's in here.  
15 Whether or not they need to be codified in the law,  
16 that's a question, but --

17 SENATOR KASUNIC: My suggestion would be  
18 that they have to, George, because if you heard me  
19 earlier -- if you heard me earlier, at one time -- at  
20 one time in our coal mines, we provided safe areas in  
21 terms of places where there were oxygen supplies,  
22 where people could get to as they were trying to make  
23 their way out of mines.

24 United States Steel Corporation, J&L,  
25 Bethlehem Steel, just three that I know of had those

105

1 regulations in place. Now, whether they were DEP  
2 policy or whether they were company policy, they were  
3 there, but you know what, because they weren't  
4 codified and they weren't in the law, they  
5 disappeared. And this very thing could happen there,  
6 too. That is why it's so important that we act in  
7 terms of legislatively passing this bill.

8 MR. ELLIS: And we're not arguing with  
9 that. We were asked for our comments. We gave  
10 comments on -- rather detailed comments on Senate Bill  
11 949. We're not asking for any lengthy delays. Nobody  
12 said that. We put our comments on the table. We also  
13 put up our proposal on the table. We'd like to work  
14 with this committee in trying to mesh the things  
15 together.

16 SENATOR MARY JO WHITE: I just want to make  
17 a point. I notice that Attachment 3 of your  
18 presentation is a detailed critique, if you will, of  
19 949 section by section, and that's what I was looking  
20 for. This is what I want. And I would like to ask  
21 that some representative of your organization sit down  
22 with DEP and with us and go through these to see where  
23 we can make modifications and where we can't.

24 MR. ELLIS: Whenever you want.

25 SENATOR MARY JO WHITE: I see no reason why

1 that process can't move relatively quickly. And I  
2 think that it will make the final product of 949 a  
3 better product, but we're not going to start over is  
4 what I'm saying.

5 MR. ELLIS: You can get in touch with me  
6 and we'll make sure we have the appropriate people  
7 wherever and whenever you like.

8 SENATOR MARY JO WHITE: Thank you very  
9 much.

10 SENATOR KASUNIC: Madam Chairman, I would  
11 also request that United Mine Workers of America also  
12 be a part of these discussions when we are formulating  
13 any proposed changes towards this bill.

14 SENATOR MARY JO WHITE: We can certainly do  
15 that.

16 SENATOR STOUT: Madam Chairman, as a member  
17 of this committee, a representative of a coal  
18 producing community, I agree with my committee members  
19 that we need to move forward rapidly to resolve the  
20 safety issue. That we've had time and I think it's  
21 now we put the people together here today, the  
22 industry, the union and the DEP that we should get  
23 some results in the near future. So I agree with you,  
24 Madam Chairman, we need to move forward in a joint  
25 effort between all parties.

1 SENATOR MARY JO WHITE: We will do that.  
2 Thank you again for your presence here today. Thank  
3 you members of the committee for your patience. I  
4 know we ran a little over time, but this was  
5 important. Thank you.

6 (Whereupon, the hearing was adjourned at  
7 11:30 a.m.)

8  
9  
10  
11  
12

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

108

C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

Dated in New Cumberland, Pennsylvania this 13th day of February, 2006.

\_\_\_\_\_  
Susan L. PetriIIa, Notary Public  
Registered Professional Reporter

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

