

Testimony

Of

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Regarding Improvements to Pennsylvania's Mine Safety Law

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Good morning. Chairman White, Chairman Musto and members of the Senate Environmental Resources and Energy Committee; my name is George Ellis and I am President of the Pennsylvania Coal Association (PCA).

PCA is a trade organization representing bituminous coal operators – both underground and surface – as well as other associated companies whose businesses rely on a thriving coal economy. PCA member companies produce over 75 percent of the bituminous coal annually mined in Pennsylvania and 90 percent of the coal removed by underground mining methods. Attachment I contains a brief profile of today’s Pennsylvania coal industry.

We thank the Committee for this opportunity to provide our perspective on ways to improve Pennsylvania’s mine safety law. The health and safety of our workforce is a paramount concern among PCA companies so we take this issue very seriously.

Before I proceed with my comments, the Pennsylvania mining community extends its deepest sympathies to the Sago and Alma mine communities and to those who have lost so much. With them we mourn for those who lost their lives and pray for a speedy and successful recovery for Randall McCloy Jr.

These tragedies are a needless reminder that we all must work harder in achieving our shared goal of zero fatalities.

I intend to make four points in my testimony this morning. Briefly, they are:

1. Pennsylvania’s underground coal mines are among the safest in the country, due to the commitments made by management and labor and fostered by comprehensive federal and state standards that are dually and diligently enforced by federal and state mine inspectors.

Please don’t misconstrue my testimony as an inference that Pennsylvania coal mines are unsafe because of deficiencies in Pennsylvania’s mine safety law. That is simply not the case.

2. Significant changes have been adopted and implemented in Pennsylvania that addressed the recommendations of the various panels that investigated the specific reasons for the cause of the 2002 Queecreek mining accident.
3. There is always room for improvement in our laws and regulatory standards governing mine health and safety and, within that context, Pennsylvania’s safety law should be updated. Our recommendations on how to effect changes and the substance of such changes are detailed later in my testimony.
4. The Pennsylvania coal industry stands ready to work with labor, state legislators and regulators to help bring about meaningful changes that truly result in mine safety improvements.

Pennsylvania's Mine Safety Record

The mine safety program in Pennsylvania is unlike typical environmental regulatory programs where the state has primary jurisdiction to implement and enforce the laws and rules governing coal mining and the responsible federal agency, the Office of Surface Mining, has an oversight role.

Mine safety regulations are subject to two equal levels of inspection and enforcement in Pennsylvania. The federal agency, the Mine Safety and Health Administration (MSHA) has primary responsibility for enforcing the federal law and national health and safety standards; the Bureau of Deep Mine Safety (DMS) within the Pennsylvania Department of Environmental Protection (DEP) is charged with enforcing provisions of Pennsylvania's safety law.

Under the Federal Mine Act, MSHA is required to inspect every underground mine four times per year and every surface mine twice per year, but the agency also conducts thousands of what it calls "spot" inspections aimed at measuring compliance with standards governing specific conditions or practices. This does not mean inspections for one or two days, respectively. Rather, it means a continual MSHA inspector presence at the mine throughout the year.

For example, in 2004 MSHA District II inspectors (District II encompasses Pennsylvania's bituminous coal mines) were on site at Commonwealth mines for 7,850 inspection shifts. The mines in District II that year had the lowest average violations/inspector shift rate (.4) among all eleven MSHA districts excluding District I (anthracite mines). The District II rate was 43 percent better than the national average.

In addition to this federal presence, DMS conducts quarterly mine inspections. DMS has 14 bituminous deep mine inspectors, three inspector supervisors, six bituminous deep mine electrical inspectors and one electrical supervisor responsible for Pennsylvania's 46 bituminous underground coal mines.

As a result of this dual level of inspection, it is not uncommon for a state or federal inspector to be at any given mine almost every workday. In addition to these inspection mandates, each coal mine operator has extensive self-monitoring requirements under the laws and regulations (e.g. preshift and onshift examinations) for their underground mines. Such inspections are performed underground by certified mine officials. Officials only become certified after a period of experience coupled with a testing requirement. MSHA also has requirements, for example, for industrial hygiene monitoring for respirable coal mine dust on both the surface and underground. 30 C.F.R. Parts 70 and 71. These self-monitoring requirements also require extensive recordkeeping by employers.

There are also extensive training requirements under the Federal Mine Act. See 30 C.F.R. Part 48. For example, underground miners are required to undergo an initial 40 hours of training and both underground and surface miners undergo 8 hours of annual refresher training.

These requirements have played a significant and longstanding role in fostering occupational safety and health in our mines. Combined with a serious commitment to safety by industry, workers and regulators, the laws have served to focus our attention on the prevention of hazardous conditions that lead to major accidents and loss of life. As a result, a safety "culture"

has emerged within the mining community designed to ensure not only compliance with regulatory standards relating to the physical conditions of the mine but also to emphasize the importance of risk analysis in reducing or minimizing the “causes” of accidents.

By any reasonable measure, coal mining is safer than it was a decade ago. With the three stakeholder groups working in tandem and the advances that have been made in mining technology, we have been effective in reducing the frequency of accidents and fatalities in the state’s coal mines.

This is evidenced by the trendlines illustrated on the charts in Attachment V. Both our Total Incident Rate and our Fatal Accident Frequency Rate have decreased in Pennsylvania over the past decade as overall coal production increased by 15 percent. While a single fatality is one too many, our record in pursuit of workers’ health and safety is equal to or better than any other coal producing state or nation.

Quecreek

While we have made dramatic improvements over the years in helping to make mining safer, there is always room for improvement.

The recent Sago and Alma mine tragedies and the 2002 Quecreek mine accident indicate to all what those in the mining community have already known – commitment to mine safety requires perpetual vigil and focus.

Following Quecreek, a number of investigations were launched into the cause of the accident and recommendations were made on preventative measures.

A number of those recommendations were adopted by DEP and implemented through a Guidance Document entitled, “Validating Abandoned Underground Mine Maps and Establishing Barrier Pillars.” A summary of the document’s requirements is provided in Attachment II. Briefly, it instituted fundamental changes in the way DEP regulates coal mining relating to the collection and verification of old mine maps; the location and full extent of adjacent abandoned underground mine workings, the presence of DMS in the mine permitting process and the distance between the point of active underground mining and the boundary of an adjacent abandoned mine that triggers long hole probe drilling.

One general recommendation that was not adopted involved updating Pennsylvania’s mine safety law. This was not because of a lack of interest or action in trying to meet this challenge. Indeed, all parties agreed that the time was ripe to address the matter; the problem was that each side had its own perspective.

Negotiations on amendments to the state law began in December of 2003 when DEP Secretary McGinty convened a meeting with representatives of PCA and the UMWA to see if the three parties shared a common vision on how to proceed. An agreement was reached giving PCA and the Union the time to meet privately and determine if a labor/management initiative could be developed. In the interim, DEP would begin drafting amendments on its own.

When negotiations between PCA and the UMWA broke down in the spring of 2004, DEP finished its rewrite and shared the draft with both parties. Since both organizations had serious concerns with the Department's version, we decided to resurrect our negotiations. The Department decided to have its proposal introduced.

This Committee, DEP, Senator Kasunic and Representative Bastian, the respective Senate (SB949) and House (HB2229) sponsors of the Department's bill, are all to be commended for launching this public policy discussion on the appropriate way to modernize Pennsylvania's mine safety law.

SB949

PCA opposes SB949 for a number of reasons.

Instead of making Pennsylvania's program more consistent with the modern federal program and creating a more uniform process it would, in some cases, expand the differences between the two programs and in other cases increase the duplication of work. This only adds to the confusion and duplication inherent in trying to interpret and comply with two sets of requirements that are similar to some extent but different in other areas.

In addition, it would broadly expand DEP's authority to areas in which it currently lacks expertise, provides no measure of accountability to ensure that DEP judiciously exercises its expansive powers and would require a significant upgrade in staff to properly implement the new law. Many of the definitions and standards in the bill are broad, subjective and poorly defined.

Attachment III of my testimony contains PCA's specific comments to SB949. The following highlights some of our major concerns:

- The proposed amendments do nothing to clarify the regulatory environment for coal mine operators in the Commonwealth. To the contrary, the proposed amendments continue to foster existing inconsistencies between state and federal regulatory schemes. The proposed amendments adopt some federal regulations (generally to the detriment of the operator) and ignore others resulting in an incomplete and inconsistent regulatory framework and uncertainty for operators required to adhere to differing standards. Simplification, consistency and uniformity ought to be the objectives of any amendments to the mine safety laws in Pennsylvania.
- Amendments aimed at expanding the authority of DMS without any procedural safeguards to consider safety issues in conducting reviews of permits issued to operators under other statutes and to approve every plan, process, tool and equipment used by an operator is a recipe for intrusive governmental interference, unnecessary bureaucratic growth, increased costs to operators and the state and permitting and operational delays that will adversely impact operators and their businesses.
- The civil penalty/sanction proposals contained in the amendments are unnecessarily severe. Public nuisance categorizations, exorbitant maximum civil penalty amounts, mandatory penalty provisions for individuals, mine officials and operators, a 20-year

statute of limitations, equipment forfeiture and criminal penalty provisions are all examples of the harsh, overreaching and punitive amendments being proposed.

- Amendments aimed at holding operators responsible for contractor violations are misguided, inconsistent with federal regulations, punitive and contrary to common law principles regarding control of the workplace and employees.
- Certification and supervision provisions are restrictive, burdensome, not productivity enhancing measures, raise manpower availability issues and will add to the operator's costs. Reciprocity is not addressed.
- The structure of the rulemaking Mine Safety Board has the potential to politicize decisions on regulations. Its powers appear to be unprecedented – it can change the provisions of law by regulation and address areas not contemplated in the Act by rulemaking. Furthermore, its rulemaking is not subject to the normal regulatory review process, providing no standing for legislative committees or IRRC to comment.
- The mapping and survey standards are unrealistic, impractical, confusing and unnecessary to enhance mine safety.
- In expanding DEP's authority in approving electrical equipment, SB949 provides no parameters for DEP to follow in setting standards or procedures for compliance; no guidelines for how such equipment is to be evaluated; no time frames for DEP decisions, and no procedures for resolving disputes. It defers these critical decisions to DEP's discretion during implementation.
- It expands the jurisdiction of the Diesel TAC into areas that it has no expertise (e.g. advising the Secretary on the approval and introduction of new technology in an underground coal mine).
- SB949 has a significant manpower cost component to the state. As written, DEP would be reviewing and approving every plan, process, tool, equipment that the Pennsylvania coal industry purchases or uses. In addition, Section 108 implies that the state will be involved in health areas. Finally, legal costs and time, including inspectors needed to testify, will increase as penalties the size of those proposed in Article V are litigated. Appeals of DEP decisions are also likely to increase. Without the proper staff complement to implement SB949, permits and plan approval decisions are likely to be delayed.

PCA's Proposed Mine Safety Legislation

As an alternative to SB949, PCA respectfully asks the committee to consider its proposal contained in Attachment IV.

Essentially our bill by reference replaces most provisions of state law with corresponding provisions of the federal program (30 C.F.R. Part 75 MSHA regulations).

This is similar to the approach taken by the Pennsylvania Industrial Minerals Industry and supported by DEP when it upgraded its regulatory standards. This approach will also ensure consistency in application and enforcement by moving towards a uniform program, provide operators with a sense of certainty on what is required for compliance, and eliminate the confusion and unnecessary duplication inherent with a dual regulatory program.

DMS will continue its inspection and enforcement roles along with federal inspectors but the disparity between the two programs would be greatly reduced.

DMS would have authority to issue citations, imminent danger withdrawal orders and failure to abate withdrawal orders.

Federal petitions for modifications, roof control and ventilation plans would also be enforceable by state inspectors.

Regulations adopted by MSHA after the effective date of this act would be deemed approved subject to the completions of Pennsylvania's Regulatory Review Process.

Under Section 101(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(a), MSHA has broad rulemaking authority to promulgate, through notice and comment, improved health and safety standards. MSHA cannot promulgate new rules that reduce the protections afforded to miners. Such rulemaking provides opportunity for notice and comment by the regulated community and routinely comments are received from a broad spectrum of interests: mining trade associations, academia, labor organizations, individual mining companies as well as individual miners. Frequently such rulemaking efforts also involve public hearings which frequently include testimony from individual miners in addition to labor organizations, trade associations and mining companies.

Also, there is a process under Section 101(c) of the Federal Mine Act that permits modification of standards at individual mines where the operator can demonstrate that the rule results in a diminution of safety at that mine or that the proposed alternate method will provide a measure of protection equal to that of the rule. Such process involves an investigation and possible hearing before an administrative law judge of the Department of Labor and an appeal to the Assistant Secretary of Labor for Mine Safety and Health. Such petitions for modification involve the miners at the particular mine in both the investigation and any hearing process. This process has been utilized to address the use of new technology, such as high voltage longwall equipment. Such MSHA-approved modifications would be deemed acceptable in Pennsylvania.

The bill allows the Department to levy civil penalties against operators. The amount and structure of the fee system is patterned after MSHA's.

The bill retains the state's diesel provisions.

In addition, it contains consensus amendments developed by PCA and the UMWA on a number of issues, including changes to the diesel section, modifications to the provisions governing certification of miners and other skilled positions and a new section on reciprocity that would recognize the certification of workers in other states provided those states have a certification

program comparable to Pennsylvania. (We can also make the consensus amendments to these provisions available to the committee in a separate bill.)

This bill is still a work in progress. For example, while it retains the Environmental Hearing Board (EHB) as the first step in the judicial review process, we are looking for an alternative appeal mechanism that is less time-consuming, costly and formal and whose decisions would be made by individuals with expertise in mine safety matters.

If the committee is interested in this legislative approach to updating the Pennsylvania mine safety law, PCA stands committed to discussions.

West Virginia Legislation

Last week, West Virginia enacted legislation to respond to the two tragic underground coal mining accidents that occurred in early January. The legislation amends the state's existing mine safety law to address perceived deficiencies in emergency response and rescue procedures that may have hindered rescue efforts. While well intended, the new law limits the use of existing, proven rescue equipment and may even slow or hinder development of new technology.

The West Virginia law contains three principal components discussed below.

I. Emergency Communication and Tracking Systems

PROVISION: Requires operators to install and make available to all persons underground equipment capable of transmitting emergency communications from the surface to wireless communication and tracking devices at any location underground.

CONCERN: Systems that have been developed and approved for use do not achieve this goal. Systems in use today depend on the installation of underground antennas, transponders, repeaters or others devices that transmit or relay the signal in the underground environment. These underground installations are susceptible to damage in the event of an explosion, and rely on a power source which, in the event of an emergency or roof fall, can become damaged or will be de-energized by rescue teams. This would be no more effective than current communication technology.

II. Breathing Apparatus

PROVISION: Requires that a self-contained self-rescue (SCSR) device be worn by each person underground or kept within his immediate reach.

CONCERN: Because a single supplier manufacturers this device, industry's ability to obtain, service and place it may be needlessly restricted. By arbitrarily mandating use of this device, the law prohibits use of a proven alternative that is not belt-wearable, uses oxygen canisters and can be turned on-and-off as circumstances warrant.

III. Mine and Industrial Accident Rapid Response System

PROVISION: Establishes a new state-wide emergency reporting system designed to provide more immediate assistance in the event of a mine emergency or industrial accident. The new response center will provide 24-hour a day communication. Mine operators will be required to report an accident within 15 minutes of ascertaining its occurrence. Failure to do so will subject the operator to a fine of \$100,000.

CONCERN: Existing federal law and regulation (30 CFR 50.10) requires an operator to immediately notify MSHA when an accident occurs at a mine. The federal requirements make provision for operators to investigate conditions prior to triggering the reporting requirement. For example, the West Virginia law will require the reporting of elevated CO levels (which may indicate a fire) even though they may have resulted from non-hazardous causes such as exhaust from a diesel-powered equipment passing nearby a sensor, which is a common condition in many underground mines. This may result in the inundation of the response center with reports of events that do not pose a hazard or emergency.

PCA fully supports the development and use of new mining technology that performs reliably and effectively in the mining environment. We certainly are prepared to work with this committee if it seeks to use the West Virginia law as a template for similar amendments to Pennsylvania's law.

The West Virginia accidents have also launched national reviews to assess the status of mine safety technology. The National Mining Association recently announced the creation of an independent commission that will immediately undertake a study of how new technologies, procedures and training can further embrace safety in underground coal mines. The Commission's review will include an evaluation of advances in wireless communications technology, tracking devices and longer duration breathing apparatus that could further improve the industry's underground mine rescue capabilities.

In addition, MSHA recently published a Request for Information (RFI) in the Federal Register soliciting information on issues relating to mine rescue equipment and technology. This information will be used to help the agency determine an appropriate course of action necessary to improve mine rescue efforts.

In conclusion, PCA is committed to work in a collaborative process with labor, lawmakers and the Administration in establishing clear, effective and meaningful changes to Pennsylvania's mine safety law that advance the protections of our workers and their working environment.

Thank you.