

**BUILDING A BETTER PARTNERSHIP: EXPLORING  
THE MINE SAFETY AND HEALTH ADMINISTRA-  
TION'S REGULATION OF SOUTHERN APPA-  
LACHIAN MINING**

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**FIELD HEARING**

BEFORE THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

JUNE 21, 2013

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**BUILDING A BETTER PARTNERSHIP: EXPLORING THE MINE SAFETY AND HEALTH ADMINISTRATION'S REGULATION OF SOUTHERN APPALACHIAN MINING**

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**FIELD HEARING**

**Friday, June 21, 2013**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9:38 a.m., in Mitchell County Historic Courthouse, 11 North Mitchell Avenue, Bakersville, NC. Hon. John L. Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica and Meadows.

Also Present: Representatives Roe and Griffith.

Staff Present: Joe Brazauskas, Counsel; John Cuaderes, Deputy Staff Director; Linda Good, Chief Clerk.

Mr. MICA. Good morning. I would like to welcome you to the Subcommittee on Government Operations hearing this morning. We are pleased to be in Bakersville, North Carolina. The topic of today's subcommittee hearing is Building a Better Partnership: Exploring the Mine Safety and Health Administration's Regulation of Southern Appalachian Mining.

I am Congressman John Mica. I am privileged to chair the Government Operations Subcommittee of the United States House of Representatives' full Committee on Government Oversight and Reform.

I am joined today by actually the Vice Chairman of our panel, and we are an investigative body of Congress, the chief investigative panel of the House of Representatives' Oversight and Reform Committee, and our specific Subcommittee on Government Operations has very broad jurisdiction to investigate various waste, fraud, abuse, and programs of the Federal Government. The Vice Chair of that subcommittee, as I said, is the congressman from this district in North Carolina, Mark Meadows. We would not be here if it wasn't for his request. Each of the subcommittee members do get the opportunity to choose the topics that need review by the panel, and Congressman Meadows requested that I conduct this hearing and this review of mine safety, which is particularly important, as you know, to this district and this state, and to the country.

So we are pleased to be here at his request, and also have him. He is a member and now a leader of the committee. That is pretty good, too, considering I think this is his first term to be the Vice Chair of a subcommittee of Congress. So, thank you for your invitation and also fine work. We will report back to his citizens.

Being the most senior member of the panel, you wake up one day and you find out that everybody to you is your junior. But after 21 years on this committee I have seen many members, and we are very pleased with the quality of your representative and his participation, full participation and commitment that he has provided to our committee. So, I thank him again for his work and his leadership role.

Before getting down to business, I think I will first introduce—actually, this is quite an historic gathering. I can't remember a field hearing where we had four members from four different states. I am from Florida. In addition to the representative from North Carolina, we are also honored to have with us a very distinguished member from Tennessee, right across the way, Dr. Phil Roe. I have had the opportunity to work with him. He is a member of the Education Workforce Committee, and also the Veterans Affairs Committee, and he serves on one of the oversight and investigations panels and chairs the Subcommittee on Health, Employment, Labor, and Pensions. So it is quite fitting that we are joined by a nearby colleague of Mr. Meadows in this district. So welcome, Dr. Roe, Congressman Roe, to this historic district.

And then again, we are joined by a Virginia congressman, Morgan Griffith. He is a member of the House Energy and Commerce Committee, and the subcommittees on health, energy, power, and also part of an oversight and investigations panel in that particular subcommittee.

I want to welcome both Representative Griffith and Representative Roe. Since they are not members of this panel, I ask unanimous consent that both be allowed to participate in this subcommittee hearing. Without objection, so ordered.

So the order of presentation and business this morning will be opening statements by members, and I will begin that process. Then I will yield to the Vice Chair, Congressman Meadows, Mr. Roe, and then Mr. Griffith.

Then we have two panels, I believe, this morning. First we are going to hear from the panel that is assembled, and then we have another panel consisting of one witness.

So that will be the order of business today. And with that, I will begin my few opening remarks.

Again, I thank Mr. Meadows for your leadership and for having us in your district, this beautiful area of North Carolina, and also the United States. My family and I had an opportunity over the years to visit Mitchell County and spend a lot of time over in Spruce Pine in a place called Don's. I think they used to have a double cheeseburger —

[Laughter.]

Mr. MICA. I think that was one of the great losses. Also, I think Mr. McHenry had that area first. I practically had tears in my eyes after he told me that Spruce Pine was a core of that mountain

some years ago. It is a great area, and I am pleased to be here in the county seat.

The purpose of our committee, again, that I will touch briefly in my introductory remarks, is the chief investigative panel of the House of Representatives. The history of this committee, the Government Oversight and Reform, I think you have probably seen Mr. Meadows and myself. Most recently we have been kind of jammed on scandals in Washington. I am trying to remember where we left off, Mark. We started on Benghazi, and then we got shifted to IRS, and it looks like we have NSA around the corner, but this panel is very important.

The Founding Fathers were always skeptical of government, having come from colonial status where the parliament and the king had imposed a lot of restrictions on their life and freedom and their rights. In fact, it is kind of interesting if you look at the Declaration of Independence, you find they are declaring at the very beginning independence from England and the parliament and the king, but then most of the Declaration is citing the abuses of the British government, the king and the parliament. It is kind of funny. If you read through some of that, it is almost like why we are here today.

One of my favorites is he sent out his agents among us to harass and give, at that time, the colonists a rough time with bureaucracy and government. From that time forward, I think the evolution of our government and our agencies has been to try to keep government under control and sort of at bay. People had always sought freedom and independence and supported enterprise and production of the individual.

But that is—part of the history of this panel was they started Congress and had authorizers and appropriators, some of whom created the programs. It started with the Constitution, the Congress, and we create the programs through authorizing committees, and then we also fund them through appropriating committees.

Well, the Founding Fathers, way back as early as the beginning of creating any of these government agencies, never really trusted the authorizers and appropriators and created the predecessor of our committee, which is Government Oversight and Reform. And they wanted to check to see how the programs were working, how the money was spent, and delegate the intent of Congress.

So that, briefly, is the background of how our committee evolved to today and the reason we are here. So when you are trying to raise your family, make a living and survive all the various activities that government at various levels imposes on you, our job is to represent you and again make certain that we get it right.

So with that background on the committee, today's topic is mine safety, and it is incredibly important to the economy of this community and this state, as I said, and that is why Mr. Meadows brought us here. Just driving through here from Spruce Pine, if you can't see the importance of mining to this region, you must have your blinders on or your shades are down. But this is a very active mining area for the state, and it is important I think that we strike a balance between promoting safety, which everyone is encouraged to make certain we get right, but also the balance of being able to conduct commerce and do both in a positive fashion.

So today we are going to hear from three metal mining operators in North Carolina, and they are going to tell us some of their stories about the way our Federal Mine Safety and Health Administration has impacted their business. We will hear again about some of the problems related to enforcement practices and other issues that have proven difficult sometimes for them to conduct their business and industry under our mine safety agency. It is an important agency and it has an important goal in ensuring that mines and miners are safe and, again, that people are secure in their employment and safety.

However, the mine safety agency, like many Federal agencies, is a powerful government agency. They have the responsibility to conduct inspection of every metal and nonmetal mine two times a year. During these inspections, agents can write citations for violations, as we have heard, and they can also impose penalties on the mine operators.

We should also note that this Federal agency can enter a mine property at any time if the agency feels it should under the law. So it has a lot of discretion in entering and monitoring the activities and businesses of mining. Of course, there will always be a friction between the regulators and the folks that they regulate. What we try to do is sort it out and achieve some balance.

However, it should be the goal of a Federal agency such as the mine safety agency to partner with the community to work to achieve a common goal of providing a safe workplace and environment, and also a thriving mining industry. Once you close the mines down and people aren't working, you don't have to worry about regulating an industry or people working.

However, the past eight years has been a change in the philosophy of the mine safety agency, and we want to examine again what is taking place and see if fairness prevails for all parties concerned. Since 2005, the total citations have increased some 550 percent, and that is something also we want to look at today.

We believe also that some of the folks that have received these fines, may have done so in an inordinate amount of fines. And also, again, we heard about the significant increase in the fines. So I think that is something else we need to review in this hearing today and see if we have gotten out of balance in the whole process.

Moreover, I called this hearing to allow operators from North Carolina to tell Congress and their representatives how they feel the mine safety agency has operated. I will ask them and hear from them about how they feel it has worked with them, the authority granted by Congress, and again see what makes sense and how we can both be responsible with safety but also have a balance that allows us to continue to have this industry thrive and the business succeed.

So I want to thank the witnesses for being with us today. I am particularly grateful we have two other states represented, and the representatives of two nearby districts joining us.

Now what I will do is I will yield to our Vice Chair and thank him again for his leadership. He is a special kind of guy and has a business background like myself, and I think he gets it. He also, I will have to say, got us here this morning, and we are delighted to be here.

So I will yield to the gentleman from North Carolina, our Vice Chair, Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. You have got to be coming here to get here, and so it is a real encouragement just to see your involvement, and I want to start off first by saying thank you for being here, truly for showing up on this important issue. I thank the witnesses for coming today and being willing to testify and take time out.

Mining is a critical part of North Carolina's economy. We have over 800 mining permits throughout the state and over 100,000 acres. It brings in directly \$1 billion in revenue, and if you take that out in terms of the total economy, the effect of mining is somewhere around \$3.5 billion.

It accounts for over 10,000 jobs directly, and the indirect implications that we know, obviously here in Mitchell County, but throughout the district, some 27,150 indirect jobs as part of the mining industry. And these are not low-paying jobs. The average salary in the mining industry is right at \$50,000. So these are good-paying jobs that are good for the economy.

But I also want to talk about the importance of mining just a little bit because some of the people may not know how critical it is. Crushed stone, obviously, is one of our major raw materials that we look at. But that is not the only thing that we mine. Ninety percent, 90 percent of the world's high-quality quartz comes from western North Carolina. In addition to that, some 60 percent of the United States' feldspar comes from North Carolina, as well.

And in addition to that, some of the clay and other bricks used—and we get an unbelievable amount of resources that come from western North Carolina. So the aggregates industry plays a huge role in our economy. Sand and gravel, as we start to look at it, we have people here who will be testifying to that point, the construction of highways and roads, not only in North Carolina but across America. As a former developer, I know firsthand how critical that is, having access to that. One of our people here, we have used their product here, Mr. McNeely. As he testifies, he had a quarry very close to some property that I own.

But since coming to Washington, I have heard from not only many mine operators that are experiencing problems, but before I got there I heard story after story saying, you know, you really need to look into that.

So we want to make sure that we provide a safe working environment. This is not about doing something in an unsafe manner. But we also need to make sure that regulations don't overburden what we have. MSHA has an important job of keeping our miners safe, but what I have been hearing, and we look forward to hearing testimony today, is really kind of a direction that has changed from training to more of enforcement.

We called this hearing today, Mr. Chairman, both to hear directly from the North Carolina mine operators what the impact of MSHA on their businesses has been so that they can tell their stories, the frustrations they have dealing with Federal agencies and whose philosophy seems to sort that out. But we are not asking necessarily MSHA to relax their standards as much as they are as providing a consistent standard for safety, something that we can

hear as we were looking at things. It is knowing that standard and knowing that that standard is fair and how we are able to deal with that, and that it doesn't hurt jobs ultimately because that is what it is all about.

We are pleased today to have representatives from MSHA here. We look forward to hearing your testimony as well in terms of maintaining safety.

But at this time, I would like to take the opportunity to thank Chairman Mica for calling this hearing and coming to my district. At the beginning of Congress, I told the Chairman how important this issue was to my people back home, and in an environment where a lot of times people don't listen, the Chairman said, well, if it is that important, we need to have a hearing and shed some light on some of that, so he is here today to do that. So I wanted to thank the Chairman.

Also, I want to personally thank Chairman Congressman Roe from Tennessee who has been a good friend early on. He understands these issues. I am humbled by this because I am on a panel today with three chairmen of subcommittees. So to have this kind of historic—I think the Chairman mentioned it is an historic day. To have four members of Congress from four different states, to have three chairmen on a subcommittee hearing just shows how important it is. So I would like to thank him, as well.

And Chairman Congressman Griffith from Virginia knows mining well. We talked on the House floor just the other day about some of the issues that he deals with in Virginia. So having reasonable MSHA regulations are critical.

I would like to ask the Chairman to just highlight three individual letter records and ask him for his consent to have them for the record, if you don't mind, Mr. Chairman. One of them is from the Commissioner of Labor, Cherie Berry, who is very concerned that we have gone to an enforcement mechanism from a training. She has her head of mining and safety, William Garrenger, here today. I thank him for coming. So I would ask, Mr. Chairman, if we could submit this record, this letter for the record.

In addition to that, I have a letter from Congresswoman Virginia Foxx, who knows this area well, is from Avery County originally. She serves in Watauga in Congress, in Watauga and going over. She is also on the subcommittee that actually has the legislative jurisdiction, along with Congressman Roe, over this particular area, and she has expressed her real concern that we have gone from a safety training environment to an enforcement environment and has sent a letter in support of this hearing as well.

And then finally, we have a letter from the Chairman of the Board of Directors of the National Stone, Sand and Gravel Association, which highlights some of the issues that they are dealing with as an association and some of these, and, Mr. Chairman, I would ask that you would consider these for the record.

Mr. MICA. Without objection, both the statements from the North Carolina Secretary of Labor, Representative Foxx, and —

Mr. MEADOWS. Yes. Yes, sir.

Mr. MICA.—will all be included as part of the record. Without objection, so ordered.

Mr. MEADOWS. And with that, Mr. Chairman, I yield back.

Mr. MICA. Well, thank you again. And, Mr. Meadows, let me ask you, if you would, as a courtesy before I go to the other members, I had an opportunity to meet the mayor and the sheriff. Is the mayor here? Would you like to introduce your mayor? And I thank him also. I love history, and to be in the 1907, I think it is, historic courthouse, it is quite a treat to be here and to see the great work they have done in restoring this historic building. But would you like to introduce him?

Mr. MEADOWS. Thank you, Mr. Chairman.

A special thank-you to our mayor that has done such a great job here. When we talk about North Carolina, we talk about real hospitality. So our mayor has done that, and I just applaud him.

And our sheriff, thank you for the security.

[Applause.]

Mr. MICA. Thank you again, Representative Meadows.

Now I yield to Dr. Roe. You are recognized. Welcome.

Mr. ROE. Thank you, Chairman, for the opportunity to speak, and also I want to brag on Chairman Mica. He just three years ago, I guess, came over to my district, and we all had some transportation issues. At that time he chaired the Transportation and Infrastructure, a huge committee on Capitol Hill. Chairman, thank you for what you're doing. I really do appreciate it.

Mr. MICA. Thank you. It is great to help. We worked on the transportation bill, which was not easy. I described it one time as trying to give—like trying to give birth to a porcupine.

[Laughter.]

Mr. MICA. If you think it is easy, you should have been with the four of us yesterday on the floor debating the farm bill. That was not a successful delivery.

[Laughter.]

Mr. MICA. But I thank you again for all of your help and coming to this hearing. And again, it is rare that you get representatives, people with concurrent responsibilities in their districts and interests that all mesh and bringing them together for a field hearing like this. So, thank you.

Mr. ROE. Well, I want to thank the crowd for being here today. This is what democracy is all about, to bring the government to the people. And the panel, thank you. I wanted to thank you because when we hold hearings in Washington, we have people who are really professional testifiers, and all of their testimony is very slick and so forth, and you all got straight to the point, where a country boy like me can understand you. I appreciate that very much.

And I also want to thank Mark and Morgan Griffith. We have become fast and furious friends. You have elected a great representative for North Carolina.

[Applause.]

Mr. ROE. I certainly know this issue very well in North Carolina because all of my district parallels North Carolina, from Mountain City all the way to Gatlinburg. So I am over here all the time, and you probably won't recognize me. I'll either have a golf club in my hand or I will have hiking boots on, so I am over here to have fun when I come to North Carolina.

I want to introduce a very dear friend of mine that I have known for 25 years, Bill Slate sitting right back there. Bill called on me

in my medical practice for 25 years, and I appreciate your friendship. One of the things that made it a lot easier for me to get elected to Congress with these three gentlemen was that I delivered my own voters, so it helped a lot.

[Laughter.]

Mr. ROE. It worked out pretty well.

[Laughter.]

Mr. ROE. The reason I enjoy these hearings and, Mr. Chairman, the reason that I will jump at the chance to come, I have held numerous hearings outside of Washington, and this is where you really—and I can assure you, inside of 395, something is wrong with the oxygen, I can tell you. It doesn't work right. Out here, you can actually find out what is going on with real people, real jobs, and about these mandates.

And, Mayor, I want to tell you and the sheriff, if I possibly can—I was the mayor of Johnson City before I went to the Congress. That was my political job. I never served in any other political job. I would never vote for an unfunded mandate in local government if I know what I am doing. Now, these 1,000-page bills, sometimes I might get through them. But I had enough of them dropped on me to understand what you are dealing with here on the local level.

So I want to thank you for the work the local people do. The best government in the world is local government, and that is one of the reasons that we are here today, is to bring the Federal Government to the local level. And we are going to learn a lot today, a lot more than I would learn in an hour or so if I had stayed in Washington.

And the other reason I am here, Mark invited me, and anything that I can do to support him; and secondly, the MSHA comes under my committee of Education and the Workforce, which is why I am here today.

And I yield back, Mr. Chairman.

Mr. MICA. Thank you again for being with us.

Now the gentleman from Virginia's 9th District, Congressman Griffith, welcome, and you are recognized.

Mr. GRIFFITH. Thank you, Chairman. I do appreciate you doing this. These field hearings are so important, as Congressman Roe said. He came to one that we had last year in my district. This is a way—a lot of folks can't make it to D.C. to get their opinions heard. This is a way that they not only get their opinions heard by some congressmen, but also all of this goes into the official record. So it is good to get it on the record, how people are feeling, and I do appreciate you taking the time to be here, Mr. Chairman.

You come from the farthest away of any of us. I will tell you that, as Congressman Meadows said, he said you have to be coming here to get here. I know that feeling, because if you look at the map and you go as the crow flies from my house down here, it is a pretty straight line.

[Laughter.]

Mr. GRIFFITH. In fact, 221 goes through my district, which is right close to here. But that is not the way you get here.

[Laughter.]

Mr. GRIFFITH. I came through Phil's district.

[Laughter.]

Mr. GRIFFITH. I circled down 81 and circled back through Tennessee to get here because when you have a mountain district, you understand these things. That is how you get here. So it is like trying to get—about a third of my district land mass, I go through Phil's district. I drop down and go around a mountain because you can go through the mountains. It just will take you an extra 45 minutes to an hour. So I am glad to be with you all today.

I am so glad to be here. My district comprises a lot of mining operations. Most of it is coal, but we also have a significant amount of aggregates mined in my district of southwest Virginia, and so it is very important. And when I saw that there was this opportunity to come here and to learn a little bit about what is going on with MSHA, because my folks are always talking about MSHA, but I serve on the Energy and Commerce Committee, so most of my time has been spent defending the rights of citizens to have affordable energy—aka coal—and use that. But I also hear complaints on a regular basis about MSHA, so I am glad that I am here to share that.

I will say that Dr. Roe got to Congress a lot easier than I did, because when you deliver your clients, or your voters—your clients are your voters, and you deliver them, that is a good thing. I am a criminal defense attorney.

[Laughter.]

Mr. GRIFFITH. So about half of my clients couldn't vote for me.

[Laughter.]

Mr. GRIFFITH. But I am glad to be with you. As Chairman Mica said, I serve on the Oversight Subcommittee of Energy and Commerce, and sometimes it gets confusing because your committee, as you know, Representative Meadows and Chairman Mica, you all have a big oversight committee. Then each one of the other standing committees in Congress has an oversight committee that oversees particular matters under their jurisdiction. So I am glad to be sitting with the folks who sit on the big oversight committee. They have been getting all the action lately. I am a little jealous.

[Laughter.]

Mr. GRIFFITH. But I do look forward to today's hearing and finding out—I know that we are not dealing with MSHA from the coal side but from the other side of the split in MSHA safety, but a lot of the issues are overlapping. I am just glad to be invited to be with you, and thank you for doing the good work that you all are doing.

Mr. MICA. Well, thank you.

And let me say at this point, since we have heard from the members with their opening statements, that all members may have seven days to submit opening statements for the record. Without objection, so ordered.

And we will now turn to our patiently-waiting first panel of witnesses, and I will introduce them.

Again, Mr. Jeff Stoll is the Safety and Health Manager at the Quartz Corporation; Mr. Mack McNeely is Vice President of LBM Industries; and Mr. Sam Bratton is the President of the North Carolina Aggregates Association.

Gentlemen, let me just tell you a couple of the ground rules. First up, this is an investigative panel. In a minute, you will be

sworn in. You will be given—and we will be pretty liberal with the clock today. But if you get too lengthy we will cut your oratory, and you can ask through the Chair to submit additional information about anything you would like to be part of the record. So you have that ability to do that, having gone one at a time to address the panel today.

So with those basic ground rules, if you will stand, please, and raise your right hand.

[Witnesses sworn.]

Mr. MICA. Let the record reflect that the three witnesses all answered in the affirmative.

I think we are going to start today with Mr. Bratton, since you represent the North Carolina Aggregates Association. Mr. Sam Bratton, we will start with you. So, welcome, sir. Thank you for being with us, and you are recognized to present your testimony.

## **WITNESS STATEMENTS**

### **STATEMENT OF SAM BRATTON**

Mr. BRATTON. Thank you. Good morning, Mr. Chairman and members of the committee. My name is Sam Bratton. I am President of the Wake Stone Corporation and the North Carolina Aggregates Association. Wake Stone Corporation is a 43-year-old family business, a crushed stone operation with 122 employees. As President of the North Carolina Aggregates Association, I represent an industry with over 135 crushed stone quarries and 500 sand and gravel pits.

I am here today to give voluntary testimony on behalf of the aggregates industry of North Carolina regarding the role the Mine Safety and Health Administration plays in regulating metal and nonmetal mining in North Carolina. I have provided in my written testimony several copies of correspondence to and from MSHA, plus several examples of MSHA inspector overreach provided by associate members.

However, I do want to say for the record, some companies were not comfortable identifying themselves in their submissions due to fear of retribution.

The North Carolina Aggregates Association wants to assure Congress and MSHA that our members are not against safety regulations. Safety is our number-one priority. But our industry's relationship with MSHA is strained. My last encounter with Mr. Lichtenfels best illustrates MSHA's perception of the mining industry.

On November 30th, 2010, in a meeting between the North Carolina and South Carolina Aggregates Associations and MSHA, many members complained about MSHA requiring the chocking of loaded heavy equipment on a grade. These pieces of equipment are just too large, in all practicality, to chock on a grade fully loaded, but MSHA inspectors have been instructing equipment operators to chock-load their trucks on a grade in the quarry pit and then place the transmission in neutral and release the parking brake. The chocks consistently failed when tested in this manner.

When it was explained to Mr. Lichtenfels that this practice was not only impractical but also dangerous, he looked directly at me

and, I quote, "You are still killing people, and so we are going to continue to do what we need to do." I admit that there was a time in the aggregate mining industry when safety was not our top priority. But in today's business environment, producers are much more sophisticated and focused on safety.

Proof of this commitment is a 2011 metal and nonmetal injury rate of 2.6 per 100 workers, which was lower than coal, construction, manufacturing, education, health, forestry, logging, state and local government, and many others, as well as MSHA itself, which has an injury rate of 5.7 per 100 workers, more than double the metal/nonmetal mining industry. I want to repeat, MSHA's injury rate is more than double the metal/nonmetal mining injury rate.

I would like to share with you an example of overreach. In Wake Stone Corporation's Ashe County quarry, an inspector witnessed a customer truck driver climb on the side of his parked truck to check the truck bed. The driver was very careful and deliberate in performing this action, using three points of contact at all times. The inspector issued Wake Stone an imminent danger order and substantial and significant citation, with a high likelihood of permanent disability.

When asked what should be done to prevent this circumstance from occurring again, the inspector told us that all customer activity outside of a truck must be done off quarry property. We explained that it is much more dangerous for a driver to perform this action on the shoulder of a public roadway versus in a quarry, where an area is provided for trucks to pull over. The inspector stated he did not care what happened to the driver outside the quarry entrance. But we presented a MSHA video in our defense which we possessed at the time of the citation. It was entitled "Customer Delivery Truck Drivers Hazard Training." This is a slide from the video.

The video clearly shows the exact same activity performed in a quarry in the same manner in order to demonstrate the proper way to climb a truck to get to a load. After viewing the video, MSHA refused to vacate the citation and imminent danger order. So we contested it. Unfortunately, we decided to settle for pennies after two years and three months and countless hours and dollars of resources. The decision to settle was based upon our concern that legal precedent could be set if the case went before the biased MSHA commission.

It is our belief that training is much more effective than enforcement. But MSHA continues to place much more emphasis on enforcement. However, Joe Main, Assistant Secretary of Labor for MSHA said himself that training is a top priority for MSHA. But MSHA recently requested in their 2013 budget a \$5 million reduction in funding for the state grants program, requesting the funds be shifted to enforcement; so, from training to enforcement. The reduction in \$5 million to be shared among 49 states does not appear significant. It is only \$5 million shared, but it would devastate the North Carolina Department of Labor's Mine and Quarry Bureau Miner Safety Training Program.

Our goal is a better relationship with MSHA. We desire consistency, transparency, cooperation, accountability, fair and due process of contested citations, differentiation of surface aggregate pro-

duction from underground mining and all coal mining, and performance-based enforcement and more training dollars. We believe these goals can be achieved by the following recommendations.

First, establish a three-member committee to review contested citations with representatives from MSHA, mining, and an MSHA-trained attorney.

Two, develop a method of communicating all vacated citations to MSHA inspectors and mine operators. This is not done today.

Conduct a process audit of MSHA procedures.

Focus more resources on training.

Establish a performance-based inspection process so those operations that need more enforcement get more enforcement, and those that don't do not.

And more differentiation between coal mining and surface aggregate operations.

I want to state, our industry needs MSHA. We need safety regulation. But we do not need it in the form it is administered today.

I now ask all the people present that support this testimony through the North Carolina Aggregates Association to please stand.

Mr. Chairman, committee members, we respectfully request the Committee on Oversight and Government Reform take action on these recommendations. Thank you.

[Prepared statement of Mr. Bratton follows:]



3700 National Drive, Suite 210  
Raleigh, NC 27612

June 17, 2013

Congress of the United States  
Committee on Oversight and Government Reform  
Subcommittee on Government Operations  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Sirs:

I am offering this written testimony along with corroborating evidence on behalf of the North Carolina Aggregates Association (NCAA) in regard to the role the Mine Safety and Health Administration (MSHA) plays in regulating metal/non-metal mining in North Carolina.

My name is Sam Bratton, and I am currently the President of the NCAA. The NCAA represents aggregate producers in the state of North Carolina, which has over 135 crushed stone and 500 sand and gravel operations. Each year, North Carolina produces approximately 84 million tons of crushed stone, sand and gravel, which equates to 10 tons annual per capita consumption. Over 50% of those tons are used for publicly funded projects. The mining industry in North Carolina provides direct employment to approximately 10,230 people with a total economic impact of \$3.5 billion per year. The industry provides the essential ingredient in all highway construction projects. One mile of a typical four-lane interstate highway with aggregate base requires about 38,000 tons.

I am also president of Wake Stone Corporation. Our company has four rock quarries in North Carolina and one in South Carolina. We have 122 employees with an average of 15 years with the company. My father, John Bratton (deceased), started the business in 1970. Both of my brothers, John and Ted, preceded me as president of the company. I have more than 26 years of experience in the mining industry and have held numerous positions in sales and production.

The NCAA is excited to have this opportunity to testify before the United States Congress on behalf of the aggregate mining industry in North Carolina. We have worked hard over the past several years corresponding and meeting with MSHA locally and nationally to influence change within MSHA. We have provided in this testimony several copies of correspondence with MSHA to prove our effort. We want to make sure Congress and MSHA know our members are not against safety or safety regulations. NCAA members believe safety is their number one priority. There is no doubt in my mind.

There certainly was a time in the aggregate mining industry when safety was lacking. But in today's business environment, producers are much more sophisticated and focused on safety. Proof of this commitment is the 2011 metal/non metal injury rate of 2.6 per 100 workers, which was lower than Coal, Construction, Manufacturing, Education/Health, Forestry/Logging, State and Local Government and MSHA who has an injury rate of 5.7 per 100 workers. In 2011, MSHA spent an average of \$1,392.10 on enforcement per mineworker. The Occupational Safety and Health Administration (OSHA) in the same period spent \$4.63 per worker, and OSHA industries have higher injury rates.

Our industry needs MSHA and wants to be regulated for safety. The regulation of safety makes us all better operators and employees in the mining industry. We do not propose the Committee do away with MSHA, but we strongly believe reform is needed within its ranks. MSHA regulates our industry with impunity and acrimony. The time has come for a balance between MSHA and the aggregate mining industry.

MSHA needs more accountability, transparency and better due process. There is significant room for improvement in the way they manage their agency. MSHA's inconsistent enforcement with no communication to the mining industry of vacated citations provides an environment ripe for the abuse of power. The process of contesting a citation can take years and thousands of dollars.

There are examples within my testimony of citations that should never have been written. These examples demonstrate MSHA's willful overreach with enforcement through excessive citations and fines. In 2006, MSHA assessed \$5.5 million in fines for all aggregate mines. In 2010, the total assessed by MSHA was \$20.4 million. The incident rate did decline in the same period from 3.41 to 2.33 per 200,000 hours worked, but it was trending down well before the increase in citations and fines. If you look at the graph in the statistics section, you will see no clear correlation between substantial increases in enforcement and the decline in the incident rate. I want to be clear our industry's goal is "zero injuries and incidents." We do not believe MSHA's continued excessive enforcement is the answer to reaching this goal.

Training is the number one safety tool. Joe Main, Assistant Secretary of Labor for Mine Safety and Health, has said himself that training is a top priority for MSHA. The mining industry needs training support. Training is the foundation of a strong safety program. But MSHA recently requested in their 2013 budget a \$5.0 million reduction in funding for the State Grants program be shifted to enforcement. The reduction of \$5.0 million to be shared among all 50 states does not appear significant, but it will devastate the North Carolina Department of Labor's Mine and Quarry Bureau miner safety training program. MSHA is statutorily required to fund the State Grants program up to \$10.0 million, but they have never funded the program to this level. A \$5.0 million reduction is over a 50% cut.

Our industry continually sees new interpretations of existing standards by MSHA, which in my mind is evidence inspectors cannot find traditional ways to cite operators, so they create new ways to adapt the regulations to increase the opportunity for citations. The most consistent example of overreach is when inspectors insist on inspecting equipment

most consistent example of overreach is when inspectors insist on inspecting equipment tagged as out of service. These pieces of machinery are not to be operated until the defect is repaired.

MSHA inspectors have disregarded their own regulations, which clearly state that an inspector shall not inspect a piece of equipment for defects if it is tagged out of service for repair. We continually see this happen and we continue to be issued citations. Why does MSHA not stop this practice that is in clear violation of their own standards? We believe there is an unwritten mandate within MSHA to aggressively write citations, and there is no consistent communication to inspectors regarding the vacation of their citations. With no system for industry to track contested citations, we cannot provide evidence to an inspector that his citation is unreasonable. It appears that MSHA wants to keep the industry from being informed so they can continue to write bad citations in an effort to see if they can establish precedent.

Another example is the multiple attempts by inspectors to cite mine operators for not having comprehensive new miner training for vendors, scientific workers, loggers, dump truck drivers or other visitors to mine property when these groups' activities on mine property have limited interaction with mine operations. The regulations clearly state site-specific training is sufficient for these workers. For instance, Wake Stone can no longer find a local logger to cut timber on quarry property. They do not want to deal with MSHA. We know of only one logger based in North Carolina that is willing to cut timber on mine property. Over zealous enforcement from MSHA has discouraged them from working on mine properties.

Our industry has been able to successfully challenge some of MSHA's overzealous enforcement, but at a cost of thousands of dollars and years of effort. Citations that are obviously not valid are upheld until overturned by an Administrative Law Judge and then MSHA maintains that ALJ rulings are not binding for MSHA when not ruling in their favor but binding when ruling in MSHA's favor. This very statement was made by the Southeast District Manager. MSHA cannot have it both ways.

A clear example of the lack of objective and fair due process is a notice that was released this week by the Southeast District Manager stating that all contested citations are to now be conferenced with the Field Office Supervisor (FOS). The FOS supervises and instructs his inspectors on what citations to write. There is very little chance an FOS will vacate a citation written by one of his own inspectors. It appears to me that this is the proverbial "fox guarding the hen house." While these type directives are issued, our industry is unable to provide input into the changes. We are simply told by MSHA what is right and wrong with no representation or input.

An example of overreach was when Wake Stone was cited a Significant and Substantial citation with an Imminent Danger Order for a customer truck driver climbing the side of the bed of his truck using three points of contact. After the citation was written, we showed the MSHA inspector, FOS, and District Manager a copy of an MSHA training video entitled "Customer and Delivery Truck Drivers Hazard Training," which demonstrated this practice as proper procedure. At that point, the MSHA FOS and

District Manager decided to disregard the video and not vacate the citation. The citation was eventually reduced but never vacated and it took over two years to accomplish this.

The NCAA has worked hard to establish a cooperative relationship with MSHA. The enclosed documentation of correspondence with specific citations is evidence of our efforts and frustration. We are so pleased to finally have the ability to speak before a Congressional Committee in order to bring about change to MSHA. The aggregates industry desires from MSHA the following goals:

1. Consistency
2. Transparency
3. Accountability
4. Fair Due Process of Contested Citations
5. Cooperation between the agency and industry
6. Differentiation of surface aggregate production from underground mining and all coal mining.
7. Performance based enforcement.
8. More Training Dollars

We believe these goals can be achieved by the following suggested changes:

1. Establish a three-member committee to review contested citations. The members should be a mine operator, MSHA representative, and an MSHA trained attorney and their rulings must be made public so they are held accountable.
2. Communicate all vacated citations to MSHA inspectors and mine operators. This should be done through a web-based system. We understand there can always be different conditions upon which the citation is written, but this information will lead to more accountability and consistency within the system.
3. Conduct a Process Audit of MSHA procedures. MSHA has not been held accountable because nobody wants to be seen as anti-safety. Our industry is very focused on safety. This is not about safety. It is about a government agency operating without the necessary accountability and transparency.
4. Focus on Training and a much more collaborative effort to assist mine operators with their safety programs.
5. MSHA must change how they view operators. They have consistently had an adversarial relationship with mine operators. MSHA sees themselves as the police and the mine operators are the criminals. We are viewed as guilty by MSHA and they believe they are charged with proving it.
6. Establish a performance based inspection process. Do not continue to treat all operators the same. If we are doing a good job, lower the inspection frequency and focus on those operators that need more enforcement. This performance based inspection process will lower costs and focus attention on those operators that need it.
7. More differentiation between coal mining and surface aggregate operations. Do not use a coal disaster as justification to increase enforcement on an unrelated portion of the mining industry. We are not coal and we do not mine underground.

Most of these of these can be implemented without additional costs, but if there were additional costs the industry would be willing to share in those costs

MSHA does not trust the private sector and the private sector does not trust MSHA. This is a very difficult relationship. As long as MSHA dictates the regulations without industry input, continues to write inconsistent and bad citations, and prevents operators from due process, then our relationship will continue to worsen. We respectfully request that Congress stand up to MSHA and make this agency regulate appropriately for the benefit of miner safety and the industry. We need MSHA and we need regulation, but we do not need it in the form it is administered today.

Sincerely,  
NORTH CAROLINA AGGREGATES ASSOCIATION



Samuel T. Bratton  
President

Mr. MICA. Thank you for your testimony.

Let the record reflect that your members also stood, a large number of them, and we appreciate also that they are with us today.

Mr. BRATON. Yes, sir.

Mr. MICA. We are going to hold questions until we have heard from all of the panelists.

Mr. Mack McNeely is next. He is the Vice President of LBM Industries.

Welcome, sir. You are recognized.

#### **STATEMENT OF MACK MCNEELY**

Mr. MCNEELY. Mr. Chairman and members of the committee, thank you for holding this hearing and for this opportunity to testify. I appreciate your interest in our concerns with MSHA. I am Mack McNeely, Vice President of LBM Industries in Sapphire, North Carolina. We have three operations that are under MSHA jurisdiction. Our primary contribution to the local community is our mining operations. We treat safety at our mines as a priority. We are a very small operation. We work hand-in-hand with our employees, and the last thing we would ever want is for somebody to be hurt. We have a very good safety record.

I would also like to say that MSHA has an important role in mine safety. We support that role. Safety is paramount to us, and we do not mind following the rules. The biggest issue we have with MSHA is how unpredictable and inconsistent they are with their interpretations and enforcement. Let me give you a few examples.

In 1998, we installed a new conveyor with guarding at one of our quarries. Before putting the conveyor in service, we had a courtesy inspection by MSHA to make sure it was in compliance. After more than 20 inspections, an inspector in 2010 cited us for inadequate guards on the conveyor, so we had to stop production for 24 hours while rebuilding the guards. We were given a field citation, but we couldn't resume production until we had new guards installed to satisfy the inspector.

When ordering new conveyors from a manufacturer in Pennsylvania, they asked us to provide drawings showing where to locate the safety rails along the conveyor walkways. The conveyor company told us that every MSHA district interprets the safety standard differently, that there was no way they could install a rail to satisfy the inspectors by all the districts.

We received a citation for a seat belt on the Bobcat series. Could you show the slide, please? The edge of the loose end of the belt was a bit frayed. Even though the fray had no effect on safety, we received a citation for S&S, high negligence, and likely to cause a fatality, with an \$1,100 penalty. We negotiated it down, but it should not have been cited at all. It had nothing to do with safety.

And my last example is one that is still on the grill. In February 2010, the inspector gave us fair notice that an excavator didn't have hand rails for fall protection. The manufacturers build equipment according to international safety standards, but the standards accepted by the rest of the modern world were no longer good enough for MSHA. We contacted Caterpillar, but they do not supply such rails because their equipment, of course, was designed to meet international safety standards, and, "MSHA has not provided

clearly-defined standards regarding adequate fall protection or safe access.”

We found an after-market supplier for guard rail kits and ordered one. We had a dozen machines that would need these kits, and it was going to cost us over \$50,000. In June before the guard rail kit had even arrived, MSHA issued a bulletin that said if the equipment meets industry standards, that would be deemed sufficient.

In November, I attended a meeting where the assistant secretary, Jim Main, was the keynote speaker. He also affirmed that if our equipment met industry standards, we were okay, so we thought that was pretty solvent when he said that our folks could use the access pass that the manufacturers had installed.

During a 2011 inspection, the inspector asked to look at a part of the excavator. Our superintendent climbed up the steps, stepped onto the deck and grabbed the hand holds, which is the way the manufacturer had designed access to the engine compartment. The inspector issued a citation and imminent danger order for not using fall protection. We explained MSHA’s policy to the inspector and that we heard it straight from Jim Main. We got a special assessment penalty of \$6,300.

At the closeout meeting, the inspector said something quite different. He told us, and I quote, “This is not about safety. It’s about compliance.” Well, I ask you, compliance with what? What more could we have done than comply? We know that similar citations have been vacated, but not ours. We have other inspectors tell us that the citation should not have been issued, and I would like to say that our last inspection, which was this week, the inspector said going—alright with the same citation.

I would imagine, as you evaluate my testimony today, it would be easy to believe that these issues are unusual, but they are not. Usually the people who testify before this committee are the ones with the biggest, strongest story to tell, but the strength of my testimony today has to be its commonness. Similar testimony could be repeated by practically every miner in the state.

MSHA’s focus needs to change from compliance back to safety. We need clarity and consistency with safety rules and a timely appeals process. We need your help and need MSHA to do a better job. It would be wonderful to be able to view MSHA as a partner in safety instead of an adversary.

Thank you again for your interest in our concerns and this opportunity to testify.

[Prepared statement of Mr. McNeely follows:]

Statement of Mack McNeely  
Before the House Committee on  
Oversight and Government Reform  
June 21, 2013

Mr. Chairman and Members of the Committee, thank you for holding this hearing and for this opportunity to testify before you. I appreciate your interest in our concerns with the Mine Safety and Health Administration, MSHA.

I am Mack McNeely. I am Vice President of LBM Industries in Sapphire, North Carolina. We operate two stone quarries and a river sand operation that are under MSHA jurisdiction, the Whitewater Quarry in Transylvania County, and the Hewitt Quarry in Swain County, and the Solesbee Sand Pit in Macon County.

Our Hewitt Quarry, which we operate under the name Nantahala Talc and Limestone, is the oldest continuously operated quarry in North Carolina, and we have been an important employer as well as supplier of stone and building products for our community for many, many years. We are proud of the contribution that we make in our community and we are proud of our mining operations.

We treat safety at our mines as very, very important. We are a pretty small operation, and everyone that works at the mine knows everyone else. We work hand and hand with our employees, and the last thing we want is for anyone at our mines to get hurt. We have a very good safety record. Whitewater quarry has only had one lost time accident in the past 13 years, Hewitt Quarry has only had one lost time accident in the past 27 years, and Solesbee has not had a lost time accident in the 9 years that we have operated it. Over the past 5 years we have had only one lost time injury report, and that happened this year when one of our employees thought he was having symptoms of a heart attack while he was at work. We took him to the hospital, and it turned out he had a case of pleurisy and was treated for that.

I also want to say that I am not here to criticize MSHA's role of keeping mines and miners safe. MSHA has an important role, and we support that role.

But we do have concerns with how they interpret their role. We know our role, and safety is paramount to us. We don't mind to follow the rules, but we should be able to know what they are, definitively.

I think the biggest problem we have with MSHA is how unpredictable and inconsistent they are with the interpretation and enforcement of their requirements for our mines. Let me give you a couple of examples of what I mean by that.

In 2010 we had an inspection at our Whitewater Quarry. We have a conveyor there with a guard at each end of the conveyor to keep anyone from accidentally contacting a moving part. The conveyor and guards were installed new in 1998. Before putting the conveyor in service we asked for and received a courtesy inspection by MSHA. Between 1998 and 2010, we had approximately 23 MSHA inspections, and in none of those did an inspector ever have a problem with the guard. Then the inspector in 2010 came in and said the guards were not adequate, that they didn't cover quite enough. So we had to close down production for 24 hours while we replaced the guards. We could have appealed the citations, and after years of work, we might have had them vacated. But, in any scenario, we couldn't resume production until we had built and installed new guards that were satisfactory to the inspector's opinion on that particular day. After the cost of being shut down for a whole day, the penalty was pretty insignificant, so we just paid it. Having the citations vacated years down the road would have been a hollow victory. But it didn't mean we were any less upset by what seems to us to be the totally arbitrary and unpredictable interpretation of the rule.

Another indication of this problem involved a conveyor issue at our other quarry. Over the past few years we have upgraded most of the equipment at the Hewitt quarry. When ordering new conveyors from a manufacturer in Pennsylvania, they asked us to provide drawings showing where to locate and install the safety rails that run alongside the conveyor's walkways. When we asked why we need to provide the specifications, the conveyor company basically said that every MSHA district interprets the safety railing standard differently, and that there was no way he could install a rail that satisfied the inspectors of all the districts.

Another citation we had in 2010 was at our Hewitt Quarry. We had a Bobcat skid steer that we used around the plant for cleaning up small spills, etc. The inspector cited us because along the edge of the loose end of the seat belt, past the buckle, the belt fabric was a bit frayed. I have included pictures that show how little fraying there was, and that it was along the loose end of the belt.

We actually had our heaviest miner sit in the Bobcat to see whether, when he pulled the belt out to fit him, the buckle would be on the frayed area, and it was not. So the fraying had no effect on the operation of the belt. On top of that, this Bobcat has a maximum speed of 7 mph, and it has a metal safety bar that has to be lowered across the operator's lap before the machine will operate. Despite all of that, the inspector gave us a citation for an "S&S" (significant and substantial) violation, high negligence, and likely to cause fatal injury, with an \$1100 penalty. When we questioned how he could write it up as so serious, he just said, well we write every seat belt violation as serious and fatal. We were eventually able to negotiate that one down to a non-S&S and \$224 penalty instead of the \$1100 that we were initially assessed for, so we paid it and moved on. But it should not have been cited at all, it had nothing to do with safety, and it appeared to us that it was just the inspector having to show someone that he was issuing citations.

The last example is one that is still on appeal. In May, 2011 we were inspected at the Hewitt Quarry and we received an "imminent danger" order and a citation because one of our supervisors did not "tie off" when he climbed onto the motor deck of one of our excavators in order to check the engine oil before turning on the excavator.

To explain this one I have to give a little bit of background. MSHA has been, understandably, concerned about the danger of miners falling from work platforms on mobile equipment, some of which can be pretty high. But rather than trying to write a standard for mobile equipment that everyone could agree on and that would make sense, MSHA has tried to apply general standards that don't fit. So the two standards that they have used most are one that requires use of a harness and lanyard "where there is a danger of falling" (56.15005), and one that requires "safe means of access" including handrails along elevated surfaces.

Most of the time, it is not all that practical to use a harness and lanyard when doing routine maintenance, like checking the oil, on an excavator. Because, if your tie-off point is several feet from the engine cover, your lanyard probably isn't going to be very effective at preventing you from slipping, and it may be a hazard, when you are trying to move around.

Most of the manufacturers of large mobile equipment design their equipment to comply with industry standards, and there are industry standards (ISO 2867 and SAE J185) for "Access Systems" on this equipment that the manufacturers recommend we follow when operating and doing routine maintenance. But around 2009, MSHA started telling operators that they had to install handrails along decks and walkways on mobile equipment. The machines met the standards of the Society of Automotive Engineers and the International Standards Organization, but that was no longer good enough for MSHA. The standards accepted by the rest of the modern world as safe were no longer satisfactory to MSHA. In February 2010 we were informed by an inspector that if we had a person on the deck of a hydraulic excavator we would have to provide safe access or fall protection. So mine operators, like us, started asking our equipment suppliers for "retrofitted" handrails or guardrails for our equipment. But you don't just install a guardrail on a certified piece of equipment, and the equipment manufacturers don't generally supply such things.

So in our case, we talked with Caterpillar about getting a guardrail for one of our excavators. They told us that they did not supply such guardrails, in part because MSHA "has not provided clearly defined standards regarding adequate fall protection/safe access." I have included the letters from Caterpillar with this testimony.

Caterpillar did give us the name of an after-market supplier, and we ordered a guardrail kit for our newest machine to see if it would work. It cost us \$4500. We also built and installed a handrail kit in our shop for one of our older machines. We had about a dozen machines that would require handrail kits. We were looking at spending about \$54,000 plus installation costs for this new initiative.

So this was in early 2010, and there was a lot of uncertainty about what MSHA required and how we would comply, and so on. This issue got big enough

that the national office for MSHA began talking with the equipment manufacturers and mining associations about it, and as a result, in June 2010, MSHA issued a Program Information Bulletin, P10-04, which I attached to my statement.

I won't go through the whole Bulletin, but essentially it appears to say that if the equipment is designed and manufactured in accordance with the ISO or SAE industry standards for safe access for operation and routine maintenance, and if the operator is following the manufacturer's recommendations for accessing the equipment, then that will be sufficient. You don't have to go beyond what the manufacturer has installed and attach guardrails, if the equipment complies with the international industry standards. Incidentally, we received this bulletin before our first custom ordered handrail kit arrived, and we were relieved that we had not ordered kits for all twelve machines.

Needless to say, we were happy to get some clarity and certainty about the rules. A couple of months after the Bulletin came out, in November, 2010, I was at a meeting of the North Carolina Aggregates Association in Charlotte, where Assistant Secretary Joe Main spoke and answered questions. One of the questions was about what MSHA was now requiring for mobile equipment, and the Assistant Secretary referred to this Program Information Bulletin, and said that if the equipment was certified and we were following the manufacturer's recommendations, then we would be fine with MSHA.

So we thought that was pretty solid. It appeared that the matter was finally settled. We told our folks to use what the manufacturers had installed. I want to add that on all of our equipment, the handholds and footholds that the manufacturers have installed allow you to always have at least 3-points of contact, just like when you are climbing a ladder. These are the same excavators that you will see on highway and other construction jobs all over the nation.

So in May, 2011 we had our inspection, and during the inspection the inspector asked to inspect one of our excavators that was not being used that day.

Our mine supervisor who was accompanying the inspector said, ok, but I need to do a pre-shift exam first. So, in full view of the inspector (because he

thought he was in compliance), he proceeded to climb the ladder on the side of the excavator, and step onto the motor deck and lean down and grab the handholds in order to access the engine compartment. (I have attached a couple of pictures that show the deck and handholds.)

After he had gotten onto the motor deck and was holding the handholds, the inspector told him to immediately come down, that he was issuing an imminent danger order because he was not tied off.

The inspector subsequently wrote us a citation for not using fall protection. At the closing conference we tried to explain to the inspector what our understanding of MSHA's policy was, and about having heard it directly from the Assistant Secretary. He said he would take it up with his supervisor. The next thing we got was a "special assessment" with a penalty of \$6300.

It is important to note that in attendance at the inspection close out meeting was a representative from congressman Heath Shuler's Office. We, along with a group of miners in his district, met with the congressman during the late summer of 2010 to discuss the issues we were having with MSHA. This fall protection/safe access issue with excavators was one of the items discussed. Because of the congressman's familiarity with the issue, we felt that his office should be informed of the citation and withdrawal order.

At the close out meeting the inspector acknowledged that he didn't know that the superintendent maintained 3 point contact.

Finally the inspector told the Congressman's representative "This is not about safety. It's about compliance." I ask you compliance with what? 0

Feb, 2010- inspector says we need additional fall protection.

June 2010-Bulletin says no additional protection required.

Nov. 2010- Joe Main says no additional protection required.

May, 2011- Imminent danger order, citation, fall protection/safe access required, a \$6300 fine. Remember "This is not about safety, it's about compliance."

As I said, we are still contesting this citation, and unfortunately it is costing us money to do that. We know that other operators were cited after the bulletin came out and in light of the confusion over the bulletin and MSHA's public statements, some of those citations were vacated. We hope that they will eventually do the same for us. But this citation was conferenced with the Knoxville office supervisor and has been handled by an MSHA attorney that has offered no significant reductions. But we would also like to see MSHA clarify and actually follow its policy. It seems the previous effort, the 2010 Information Bulletin, confused not only the operators but the Assistant Secretary as well. Quite frankly, we still do not know what we are supposed to do about the excavator access issue, we have had inspectors since that May 2011 inspection tell us that the citation should not have been issued or they didn't understand why it was written.

Maybe inspector LaRue described today's climate best when he said "It's not about safety, it's about compliance." MSHA's focus needs to change from compliance back to safety. Quite honestly MSHA has introduced so much vagary, distrust, and uneasiness into our efforts that they have not only left mine operators frustrated, but they have totally lost the respect of the miners themselves. They have left our safety department bogged down preparing for conferences and appeals, to the point that even for us, "it's not about safety, it's about compliance."

I would imagine that as you evaluate my testimony today, it would be easy to believe that these issues that I have described are unique, or unusual. Actually, these types of issues are not only common but are quite typical. I know that typically the people who testify before your committee are the ones with the strongest story to tell. The strength of my testimony would have to be its commonness. This testimony could be repeated by just about every mine operator in the state.

As I said at the beginning, we are all interested in safety, and MSHA has an important role, but we certainly need your help in making sure that they do a better job. There is too much arbitrary, inconsistent, and unfair interpretation and enforcement. Whether the entity involved is a multinational equipment manufacturer like Caterpillar, a process machinery manufacturer in Pennsylvania, or a family owned crushed stone producer in North Carolina, clearly defined safety rules lacking ambiguity are required for a safe and productive workplace. There

needs to be better accountability and better management. We need clarity and a timely appeals process that is not steeped in MSHA Bureaucracy. A process that is less onerous and costly than the bad citations themselves. We need a return to the days when operators could work with MSHA inspectors to improve mine safety. We should return to a time when operators could discuss issues with inspectors. The surest way to receive a citation today is to ask MSHA for advice. It would be wonderful to be able to view MSHA as a partner in safety instead of an adversary. It seems to us that we have a right to expect such fairness from our government. Thank you again for your interest in our concerns, and for inviting me to testify this morning.

Mack McNeely

Mr. MICA. Thank you for your testimony, Mr. McNeely.

We will now turn to our final witness on this panel, Mr. Jeff Stoll, and he is the Safety and Health Manager at Quartz Corporation.

Welcome, and you are recognized.

#### STATEMENT OF JEFF STOLL

Mr. STOLL. Chairman Mica and members of the committee, subcommittee, first let me thank the Government Operations Subcommittee and all others in this room for allowing me the privilege to speak. I believe that the very existence of this meeting underscores what this great country stands for, freedom, and the right to express peaceful opinion or dissention to governmental authorities.

Today, I come before you to testify regarding the Mine Safety and Health Administration reform debate. Most of the mining community would agree that since the inception of the Mine Act, MSHA has certainly had an overall positive impact on miner safety. But, they have since become out of balance under their current leadership by emphasizing a punitive approach instead of training and education. We in western North Carolina believe that these policies have created undue economic hardship on responsible operators and do very little to improve miner safety.

This is our petition to the committee and MSHA.

Update the 1977 Mine Act to reflect the safety modernizations and technological advancements made in the past 36 years. Quite frankly, the Mine Act is very archaic as it is currently written.

Number two, MSHA's discrimination and enforcement push needs to be reviewed from the standpoint of hindering legitimate company applications of disciplinary actions on employees. As these gentlemen indicated, accountability is a critical component of having a sound safety program.

Number three, the arbitrary and capricious citational inspection system lacks due process application and contains a triple penalty economic burden. We have the terminate citations at the behest of the inspectors, the fines that are consequently negotiated and are paid by the operators, and then we have legal fees on top of that if we disagree with how these citations have been written. So I call that kind of a triple penalty burden on the operators.

Number four, reconfigure the 800-number hazard complaint call-in system to ensure frivolous calls are not being made, creating confusion, mistrust, and resource drains for MSHA and industry.

Number five, fines and penalties, or at least a percentage thereof, should be placed in a safety escrow account, essentially a beneficial safety project grant program managed by MSHA's Small Mines Office.

Number six, MSHA's push to cut state grant program monies and funding for training and education is a step in the wrong direction for safety. More state resources should be utilized, minimizing the growth of MSHA's bureaucracy.

Number seven, MSHA should exercise impartiality on fatal investigation root-cause evaluations, eliminating automatic blame on mine management.

Number eight, MSHA's secretive approach on inspector notes, and the extent and hurdles for industry to obtain them—i.e., Freedom of Information Act—is not furthering safety improvement by preventing trust and transparency development between the regulator and the mining community. Those notes should be made available immediately. It's about safety.

Number nine, if MSHA's ARs are going to make critical and many times very costly engineering calls on mine operators, then they need to obtain the proper credentials and credibility to do so.

As a matter of appearance and credibility, MSHA should investigate why their own internal injury rates are so high since, as we understand it, the universal or bottom-line goal of any safety regulator or company safety program, what we all work for, is injury reduction or prevention.

Number eleven, reduce the overall out-of-balance approach by MSHA as it relates to their budget, amount of resources spent, where these resources are spent, policy reviews and transparency to the U.S. citizenry and the regulated mining community.

In summary, in a recent mining safety conference I attended, the central theme was that an effective safety program must not always use techno-speak and tough policy talk, but more of a personal connection and caring approach to each and every person. That is the best way to be a parent, as I have learned, a spouse, a friend, and, yes, a regulator. In this way also, MSHA should look more at this approach in how to be a more effective accountability organization for the mining community.

After all, mining is critical to our economy here in western North Carolina, as we all know. In fact, if it isn't grown, it has to be mined. A smart MSHA is therefore required in this, the 21st century. Thank you.

[Prepared statement of Mr. Stoll follows:]

First, let me thank the Government Operations Sub-Committee and all others in this room, for allowing me the privilege to speak. I believe that the very existence of this meeting underscores what this great country stands for.....FREEDOM, and the RIGHT to express peaceful opinion or dissention to governmental authorities.

Today, I come before you to testify regarding the Mine Safety and Health Administration (MSHA) reform debate. Most of the mining community would agree that since the inception of the Mine Act, MSHA has had an overall positive impact on miner safety. BUT, they have since become “out-of-balance” under their current leadership, by emphasizing a punitive approach, instead of training and education. We in Western North Carolina believe that these policies have created undue economic hardship on responsible operators, and do very little to improve miner safety.

**THIS IS OUR PETITION TO THE COMMITTEE  
AND MSHA:**

- 1) Update the 1977 Mine Act to reflect the safety modernizations and technological advancements made in the past 36 years;

- 2) MSHA's "discrimination push" needs reviewed from the standpoint of hindering legitimate company applications of disciplinary actions on employees. Accountability IS a critical component of having a sound safety program;
- 3) The "arbitrary and capricious" citational inspection system lacks due process application and contains a "triple penalty" economic burden (capital exp, the fine and any lawyer fees) on mine operators;
- 4) Re-configure the "800" number hazard complaint call-in system to ensure frivolous calls are not being made creating confusion, mistrust, and resource drains for MSHA and industry;
- 5) Fines and penalties, or at least a percentage thereof, should be placed in a "safety escrow account", essentially a beneficial safety project grant program managed by MSHA Small Mines office;
- 6) MSHA's push to cut state grant program monies and funding for training and education is a step in the WRONG direction for safety. More State resources should be utilized minimizing the growth of MSHA's bureaucracy;
- 7) MSHA should exercise impartiality on fatal investigation "root cause" evaluations, eliminating automatic blame on mine management;

- 8) MSHA's "secretive" approach on inspector notes, and the extent and hurdles for industry to obtain them (i.e. Freedom of Information Act barriers days or weeks later) is not furthering safety improvement by preventing TRUST and TRANSPARENCY development between Regulator and the mining community.
- 9) If MSHA AR's are going to make critical (and many times very costly) engineering calls on mine operators, then they should obtain the proper credentials and credibility to do so;
- 10) As a matter of appearance and credibility, MSHA should investigate why their own internal injury rates are so high, since the "universal" or "bottom line" goal of any safety regulator or company safety program is injury reduction or prevention.
- 11) Reduce the overall "out-of-balance" approach by MSHA as it relates to their budget, amount of resources spent, areas where these resources are spent, and policy review and transparency to the US citizenry, and regulated mining community.

In a recent mining safety conference I attended, the central theme was that an effective safety program must not always use "technospeak" and "tough policy" talk, but more of a personal connection and caring

approach to each and every person. That's the best way to be a parent, spouse, friend, and YES.....regulator. In this way also, MSHA should look more at this approach in how to be a more effective accountability organization for the regulated community.

**MINING IS CRITICAL TO OUR ECONOMY AND PROSPERITY. IN FACT, IF IT ISN'T GROWN, IT HAS TO BE MINED! A "SMART" MSHA IS REQUIRED IN THIS.....THE 21<sup>st</sup> CENTURY.**

Mr. MICA. Thank you. I thank all three of our witnesses for their testimony this morning, and we will start with a round of questions, and I will begin.

First of all, to Mr. Bratton and Mr. McNeely, I saw some of the MSHA-produced training materials, the video. It appears from what you have said that some of the practices in their videos actually don't comply with some of their safety mandates. Is that correct?

Mr. BRATTON. Well, actually, the safety video was dismissed. They were dismissive of it, saying they weren't aware of the existence of the video, and as far as the specifics about climbing on the side of the truck, there are not specifics about that in the standard. It is about safe access and things like that. So it is broad enough where they can take and interpret what they want, and so that is what they did with the imminent danger order.

The inspector was—he was on a scrim tower 600 feet away, and we had to go down there and clear the area. The truck driver, when he was approached said, “You know, sir, this is a violation.” He said, “Well, I used three points of contact. You know, that is what I am told to do.”

And anyway, the training video—I mean, MSHA is purposeful in allowing themselves a subjective interpretation at the time of the citation, and they also fall back on sets of circumstances being different. When you are able to get a citation vacated, they will not specifically say anything that would be precedent-setting because they want to continue to issue those citations. They just may understand that at this point you have put together a good enough defense, so they have got to vacate.

So I don't know—there is not anything specific in their regulations that says that there is a safe way to access it. They just say you are supposed to use safe access, and that driver did, in accordance with a training video that they had, and they just wanted to dismiss it. It wasn't convenient for their argument. That is how they work.

Mr. MICA. Let me say, too, and I was going to say this at the outset, first I thank you for coming to testify. When we had set this hearing up and we had you all selected as witnesses, I really appreciated you coming forward. Sometimes these agencies will intimidate some of our witnesses. In fact, I have found it difficult sometimes to get folks to come and testify because they fear, as someone said, retribution.

I will tell all three of you, if there is any instance of what you feel is retribution or anyone giving you any difficulty as a result of your testifying today, I want you to notify the subcommittee or myself immediately.

Mr. BRATTON. Thank you.

Mr. MICA. I will guarantee you I will handle those people and they will not forget the truth that I rub off, and if they want to talk about retribution, I know how to provide it.

[Laughter.]

Mr. MICA. But I thank you for coming.

This is very serious. There are so many instances in which these agencies have become so powerful that they do intimidate folks, and so I thank you. And you can tell them, too, if you hadn't ap-

peared, I probably would have subpoenaed you, but I have you all here anyway.

[Laughter.]

Mr. MICA. But that being said, it sounds like the penalties, they have gone overboard with the penalties. How is the industry affected by these—was it 500 percent increases, Mr. Bratton, Mr. McNeely, Mr. Stoll? Are they imposing a financial hardship?

Mr. STOLL. I would say, if I may, we have had at one of our locations 2.2 million man-hours without an accident. The other location is approaching half a million. We have had three or four years in a row of record-setting injury rates. Our injury rate is about half or a third of that number. Mr. McNeely mentioned MSHA's injury rate woes internally.

Mr. MICA. That is their inspectors and their folks?

Mr. STOLL. That is everybody that they employ, apparently. Ours is like one-third of theirs. However, in 2012, we were fined \$143,000—\$143,000. Now, that doesn't add up. That just does not add up.

Mr. MICA. Is that multiple infractions that they charged you with?

Mr. STOLL. Multiple infractions, correct.

Mr. MICA. And how about the others? Mr. McNeely, what is your experience?

Mr. MCNEELY. Well, I would like to say that the fines have increased a good bit, but for our part, our biggest problem is the way that things get enforced in a manner—I mean, just like I mentioned this guarding issue. The fine might have been \$200, and it might be very easy to beat that citation if you appeal it and go through the process for a couple of years, but the fact is we can't resume production until those guards meet that particular inspector's standards.

Mr. MICA. The instance you cited, was that one instance in which they closed you down, or have there been others?

Mr. MCNEELY. It is more like with the excavator issues. I have letters from Caterpillar going back to 2007 where they say MSHA will not give them good enough data to design a system for their excavators. They say it just goes back and forth between you have to have handrails, you don't have to have handrails, every few months. It has been that way for years. And one day, all of a sudden, we get a \$6,300 fine. A few months before that, we are told we need to order handrails, and we are looking at buying \$50,000 worth of handrails.

Mr. MICA. You said there have been some 20 inspections before on that—what was that about?

Mr. MCNEELY. That was the guarding issue.

Mr. MICA. Okay. There is an inconsistency, a fair inconsistency in their standards and their—the unpredictability of enforcement.

Mr. MCNEELY. Right, and we were told we need to buy handrails, and we ordered some, and before they get here, we get a bulletin that says we don't need them. And then a few months after that, we hear the assistant secretary speak himself, and he says they are not required, and then the very next inspector that comes through the door writes us a \$6,300 citation.

Mr. MICA. Mr. Bratton, what is your experience?

Mr. BRATTON. The same as Mr. McNeely's. There is something that they have called pattern of violation where they want to try to issue as many citations in order to then be able to continue to escalate the fines as part of a pattern of violation. Also, within the Rules to Live By they have, which I can't cite by memory, but they have these rules that are escalating, increased severity, increased size.

But one of the real costs that we have at MSHA is the cost of due process and the fact that in defending ourselves, the resources we have to—because we are basically guilty until proven innocent in the system and we have to hire attorneys, folks in-house have to spend a lot of time and effort on this, and they are citations that should never have been written. It was two years and three months on the fellow climbing on the side of the truck, preposterous, and it got to the end and, because you will conference a citation—they used to have more of an independent review. We just got a bulletin this week that now, if we contest a citation and we ask that it be conferenced, we have to go to the field office supervisor, who is the supervisor of the investigator who is training the investigator to issue the citations, and we have to go to him for some potential impartial conferencing, which does not exist. That system has now just been set up in the last week. June 17th that notice was issued.

After that, then you appeal. You have an administrative law judge. If the administrative law judge rules in our favor, and MSHA doesn't believe that that is precedent-setting, it may lead to you going in and settling. If you want to take it to the commission above this, MSHA's commission, then it is a very biased group that rarely ever rules in opposition to MSHA.

So this is just not—the whole system needs to be changed, and there needs to be an audit. I would love to see the Government Accountability Office go into MSHA and take a look at their processes.

Mr. MICA. That is something we can request. I will confer with Mr. Meadows on that. In the meantime, too, the law—Mr. Stoll cited the law being some 36 years old. Has a state association or national, have you all developed an outline or suggestions for revisions in the law? Does anyone know? Mr. Stoll, you cited the aging of the 1977 Mine Act, that it doesn't meet today's technological advancements and modernization. Are there specific recommendations for updating that section?

Mr. STOLL. I think corporately, through the associations, we have the National Mining Association, the North Carolina Aggregates Association, they have submitted some of these ideas —

Mr. MICA. Maybe you or, I don't know, Mr. Bratton, you are with the Aggregates Association, do you have specific recommendations?

Mr. BRATTON. Yes, sir.

Mr. MICA. Changes in the law that you could submit them to the subcommittee, we would appreciate that.

Mr. STOLL. If I may, Mr. Chairman, give you one example that I brought with me is safety belts and lines. That is in the Mine Act. In fact, let me just read it to you. It says, "Safety belts and lines shall be worn by persons in order to avoid the danger of falling." Then it goes on and talks about working around stacks—taking them serious. Well, no company utilizes safety belts anymore. They

have been deemed, by testing and everything else, to be very hazardous to the miner. That is just one good example. We use four-point harnesses now when we apply fall protection.

Mr. MICA. Again, maybe as a result of this hearing, we could get the various state and national associations, if they come together, they probably have some of this drafted already, their suggestions, and then we will see if we can't check with them. Last year, I don't know how we did it, but we did the gas pipeline safety. It was similarly outdated. We got the darn thing passed. I am still stunned. Mr. Waxman signed on as a co-sponsor. Miracles do happen, even in Congress.

But again, with outdated laws and an agency that has sort of spun out of control here, it seems like basic guidelines and statute cries out for some reform. So we will work with you, and I am going to work with your representative to see what we can do in that regard.

Mr. BRATTON. I would like to submit my oral testimony for the record.

Mr. MICA. Without objection.

Mr. BRATTON. In there I have six recommendations with some specifics.

Mr. MICA. Excellent.

Mr. BRATTON. But I would be pleased to participate in the process.

Mr. MICA. Excellent. I am always quoted as saying, one of my favorite sayings to folks is don't assume members of Congress know anything, start from that proposition.

[Laughter.]

Mr. MICA. And I can tell you, I am learning a lot today. That is how things get changed, through these kinds of hearings and exchanges. Of course, you can't just talk about it. You do have to act on it.

So with those comments, let me yield to Vice Chairman Meadows. You are recognized.

Mr. MEADOWS. Thank you, Mr. Chairman.

And I thank each of you for your testimony. Obviously, some of these stories, Congressman Roe, as we start looking at these pictures, it is very illuminating when we see really the things that you have been cited for. My concern is when you start getting cited for, Mr. McNeely, in your case, a frayed hem on a seat belt that was not part of the restraining harness, it becomes very difficult to figure out what you need to spend your money on and how best to protect your workers when you are looking at an enforcement mechanism. Each time your inspector comes, you are trying to guess at what they want you to pay attention to?

Mr. MCNEELY. Well, it does, and that is probably one of the main things that we would like to say, is we need some consistency. And on issues like the seat belt or like the excavator access, it just truly don't make sense. And, I mean, mining companies have been using excavators since before MSHA was inspecting mining companies, and we still don't know how to check the oil safely. That's one of those things.

Mr. MEADOWS. Right. So, you are here today. You are three people of an industry. I mentioned in my opening testimony, I think

there are 800 permitted sites across North Carolina, so you are just three of 800, and you probably represent more than just three of those sites. But as you look at that, one of the arguments is going to be that you guys are unique, that it is only the three of you, that you are the few that are having to deal with this.

Would you say that other miners are experiencing similar or worse problems than what you have highlighted today?

Mr. MCNEELY. I would say that the things that I highlighted today are very common, and we probably have had fewer problems than a lot of other companies, even other companies that do a good job with safety.

Mr. MEADOWS. Okay. Mr. Bratton?

Mr. BRATTON. Yes. Well, that is why I asked people in the audience to stand at the end of my testimony in support of it.

Mr. MEADOWS. So what you are saying is that those people who stood, they have experienced similar situations like that?

Mr. BRATTON. Yes. If you would like to stand again?

Mr. MEADOWS. If you have experienced similar situations on the ambiguity, would you stand?

Mr. BRATTON. Thank you. I hope that helps.

Mr. MEADOWS. It does. Thank you.

So, Mr. Stoll, you mentioned about a fine of \$140,000-some-odd. You are a larger corporation, so you can afford that, right? Oh, you can't.

[Laughter.]

Mr. MEADOWS. So when we have fines like that—and let me shift our focus a little bit. When we are going with enforcement and we are seeing that it is unfair—and this kind of piggybacks on what I asked Mr. McNeely—when we feel like enforcement is unfair, owners of mines are in a unique situation in that they can't pick up their mine and move to another state. And so you are kind of trapped there and have to deal with it.

But those that have options of mining abroad, do you see us losing more and more jobs to quarries, if there are the natural resources in those foreign countries? Do you see this as being so punitive that other mines that compete with us, we might lose jobs? It is tough when you are dealing with something that you measure in tons, that it is hard to import that. But do you see us losing some of the, let's say, high-quality quartz? Mr. Stoll?

Mr. STOLL. The simple answer is yes. The reason is when you look at our fines that we had from MSHA in 2012, you are looking at \$143,000. That is hiring two months. We have 12, 13 percent unemployment here in Mitchell County, so that is the difference.

Now, the arbitrary and capricious part, I know that is kind of a harsh term, but when you look at the imbalance of applications like inspectors that these two gentlemen mentioned, and then in our particular case a lot of that \$143,000 generation came from an inspection of some of our fall protection systems that were deemed by other inspectors to be okay. So what you breed is you breed complacency. The operators in that were confused in what we have that is okay with the regulations and with MSHA, and what we don't have that is okay.

So, you know, I train our guys about complacency, especially some of our older miners, not to get complacent, to be as safe as

they can. If they don't know how to do something, always keep your guard up for safety. How would MSHA expect the operators, then, to regulate if three inspectors come down and say that system is okay, and the next one comes in and fines us \$100,000? So that imbalance can affect jobs and —

Mr. MEADOWS. So it is not knowing at what point you are going to get fined for what. And I think, as Mr. McNeely said, you had 20 different inspections, and the Chairman kind of pointed that out, 20 different inspections, and then all of a sudden you were asked to stop work and install the guardrails. So let me go to that point.

When you have these major operations, and when you get a citation and you have to stop work, that means sending people home? That means shutting it down? Or does it mean you just basically pay them while you can't operate? Is that what you have to do occasionally? Mr. Bratton, you can see probably across the board. I mean, is a work stoppage what happens sometimes when these things are issued?

Mr. BRATTON. Yes, and that means it can be stopping the use of that piece of equipment, which with a conveyor means you can't operate the plant.

Mr. MEADOWS. Right.

Mr. BRATTON. There are other activities that still could be done, but it is an expensive interruption.

Mr. MEADOWS. Is there a matrix? My time is running out, so I will finish with just a couple of very short questions here. Is there a matrix that says, okay, if you violate this, this is a major offense and you are subject to a \$50,000 fine if you do this, or you are subject to work stoppage? Do you have—I mean, to give a practical example, when I am on the highway—and I never speed, sheriff.

[Laughter.]

Mr. MEADOWS. But when I am on the highway and I am going past the speed limit sign, I know that the minute I go beyond 55 miles an hour, that I have the risk of getting a fine. Do you have the proper speed limits from the regulations that are in place? Do you understand all the speed limit signs that are out there, or are there some of them that are hidden behind bushes and things like that?

Mr. MCNEELY. The short answer is no, we don't. It is more like instead of having a speed limit, the signs say "Travel at safe speed." So if you come through Bakersville, a safe speed can be one thing, and as you go through Spruce Pine, a safe speed could be another. And it could also be —

Mr. MEADOWS. So it is up to the police officer to decide that?

Mr. MCNEELY. Exactly, and in some of these cases, it is things as big as say you were sitting in a turn lane to turn left and you get stopped and the patrolman says, "Your turn signal blinks too slow." And you say, "Well, my car is a brand-new Toyota that is designed to all the safety standards." And he says, "Well, I think it blinks too slow, it is a hazard, so you get it fixed." And then before you get it fixed, you get a bulletin that says your turn signal is fine.

[Laughter.]

[Applause.]

Mr. MEADOWS. I will close with this because, Mr. Stoll, you mentioned complacency. I have visited some of these places. I personally have visited, and I am not going to mention any names in terms of what mines I have been in, but I haven't found complacency. In fact, I found just the opposite. As a guy who doesn't know what he is doing, I had to sign unbelievable waivers.

[Laughter.]

Mr. MEADOWS. Unbelievable. I had to go through a safety class to be there. And then I got—in one particular area they got all concerned because I left my Coke can sitting on the thing, and the wastebasket lid was half open. And they said, “No, you have to close the wastebasket lid. We need to make sure we get rid of this Coke because we can get fined in case it attracts bees and it could potentially sting somebody.” Is that an exaggeration, or have you heard something like that before? I mean, I was shocked to hear that.

Mr. BRATTON. That is not an exaggeration. That is what is happening.

Mr. MEADOWS. All right. With that, Mr. Chairman, I yield back.

Mr. MICA. I recognize now Dr. Roe.

Mr. ROE. I thank the Chairman.

Mr. McNeely, just to let you know, that safety belt looked a lot better than the one I put on in the airplane I flew in.

[Laughter.]

Mr. ROE. I think there is a larger theme here today. It is one of overreach of government, and let me sort of share with you some things that may not have to do with mines. Well, one is a sulfur mine in my district, and they were issued an MSHA violation for a two-pronged toaster instead of a three-pronged toaster in the office. And, you know, I have only been in Congress four-and-a-half years, but I thought the canary died when you had an MSHA violation, something very significant, not potentially bees might get in a Coke can or a two-pronged toaster when you are trying to toast a sandwich.

I think that inconsistency that varies from inspector to inspector makes it impossible to pinpoint. It is a moving target, and it may vary from one district to another, and I almost laughingly said welcome to Medicare. I have been dealing with this for 35 or 40 years with Medicare rules and regulations. You can't offer your business and run your business. We treat safety at our mines very, very important, and the whitewater quarries have one lost-time accident the past 13 years. That is amazing. And the other quarry hasn't lost time from an accident in 27 years. And one of the lost times recently was someone who had a heart attack at the site.

I can recall when OSHA, at one of our hospitals, where the handicapped rail in the handicapped bathroom—the OSHA folks came by and said it should be here. People say it should be here, and that would be funny except somebody had to come in and change all of that and spend half a day doing that. And I told the hospital administrator, I said, “Look, this is simple. Just put you some brackets up and when OSHA comes, put the rail here. Stick the rail up here, and that will solve your problem.”

[Laughter.]

Mr. ROE. But it doesn't have anything to do with the primary goal, which is to make our miners safer.

And I think that, Mr. Stoll, you brought out at the very beginning the purpose of these acts is to make it a safe working place for miners to do their job. And it looks to me like certainly, Mr. McNeely, the operation you have focuses on that. I can't imagine a workplace being more safe than that, and to be dinged for something as ridiculous as a frayed end of a belt that doesn't even have anything to do with staying in there, that would be like the end of my belt here is dinged and it won't keep my pants up. I mean, that is how silly it is.

So, Mr. Stoll, here is something I want to comment on. Mr. Bratton, you brought this up at the very beginning. One operator is going to be cited for a violation for operating in the same fashion suggested by the MSHA training video. The MSHA inspector told the operator that the training video was incorrect, that it was up to the inspector to determine the proper procedure. How do you all know what that is? You don't, so you can't comply.

Mr. BRATTON. The operator—it is like being in the darkness. You can't tell what is going to be a fine, what is going to be a citation, what is not.

Mr. ROE. I am going to ask this panel a very tough question now, and it may not be a fair question, but any of you can jump on it. Do you feel that these inspectors are required, pressured to write citations on every inspection? If they go back and don't find anything wrong with your operation, do you feel like they are pressured to find something?

Mr. BRATTON. Yes, and we have had instances with members. There is a member who has an operation in the western part of the state, and they had zero citations. Well, then a couple of days later, three MSHA inspectors showed up with the field office supervisor and said you have zero citations. There is no doubt, there is no way you can have zero citations. I am standing here until you get a citation. So he gave them about three citations. Then the next week they came back for another inspection.

Mr. MICA. Excuse me. Could you ask the witness when this occurred?

Mr. ROE. You can respond to the Chairman's question.

Mr. BRATTON. When?

Mr. MICA. When this occurred.

Mr. BRATTON. Well, I have somebody in the audience who can tell you exactly when it was.

Mr. MICA. Was it in the last year? Five years?

Mr. BRATTON. David?

VOICE. In 2010.

Mr. MICA. In 2010, in the last three years. Thank you.

Mr. ROE. Thank you, Mr. Chairman.

And I will finish with two things to show you how hard it is for a business to prosper. In my medical practice at the end of every month, we would clean out the drawers and the closets for any medicine that may be going out of date and we send it to the homes so that people that don't have access to care can get some medicine. We put it in a bag. Well, there are two bags in the medical office. One is a red bag; that is the biohazard bag. One is just

a clear trash bag. The nurse stuck it in the red bag. The OSHA inspector came in and said what's in that bag? That was an \$1,800 fine for putting it in the wrong bag.

The second is a needle that we use to draw fluid around a pregnant woman to check for their maturity, fetal maturity. This is a point where there is no safety. There isn't one in the universe you can find. We didn't have a letter in our office to say there wasn't one in the universe. That was a \$1,700 fine.

We did exactly what you guys did. We wrote the check for \$3,500 to get these people out of our office so they wouldn't be back every day. When you make a moving target—I mean, literally you cannot meet the standard, so it is almost extortion. It is so frustrating because if you would just tell me what to do or say, “you should have done this,” we wouldn't do that. We would absolutely follow those rules.

And the last thing I've got—my time is up. I wanted to ask you a question, maybe later. All of this money that is collected in fines, \$120-something-million in 2005, in 1995 it was \$20 million—I am rounding off these numbers—how much of that money is reinvested back into education about how to make the workplace safer? Mr. Stoll?

Mr. STOLL. Well, I think there are opportunities with that money.

Mr. ROE. Do you know how much of it is? I think I heard \$5 million? Is that how much was invested?

Mr. STOLL. How much is invested back?

Mr. ROE. Yes, sir, into education. In other words, instead of not punishment but educating you all how to run a safer mine.

Mr. STOLL. I think MSHA's intentions are reflected in their budget by increasing the enforcement and decreasing the training and education. That is what their true intentions actually are released in MSHA's budgets.

I would like to mention something about the training and education part, and I would like to submit this for the record. On MSHA's very own website, it actually says—it is an historical account. It says in the response—this is talking about the number of mining fatalities since 1910. We had then the Bureau of Mines, established in 1910. “Promoting safety in mining through research and training.” So does it make any sense, with the reduction in mining fatalities to the very record low levels today, that there is a motivation to increase the enforcement budget and decrease the training budget?

The state grant program is slated to be de-funded here in North Carolina. That, to me, a lot of small operators—and we have other mechanisms to do our training. But for a lot of small operators probably in this room, that is a critical resource. So there is a disconnect with where you are putting your budgetary focus on and everything else from that perspective.

The training thing, the gentleman over here, Mr. Bratton, mentioned that there were some disconnects with some videos. We actually discovered one of those on a fall protection video. It was titled, “Fall Protection: Your Lifeline to Safety,” and there were actually two or three citational items that MSHA has in that video. One was where I was talking fall protection applications, which is

somewhat of a technical application of safety, not to choke the lanyard around a rail. This particular video shows a miner in a training video. It shows him with a lanyard around a top rail instead of using the provided main basket that provided anchor points.

The other item, the gentleman is working at height, and you have a hoist, and a hook has a broken safety latch, and we personally have been cited for broken safety latches before.

So I think there is a need for them to update their education and training resources instead of putting more money into enforcement. It just makes sense to us.

Mr. ROE. I thank the gentleman. I will yield back.

Mr. MICA. Thank you, and we will now yield to Congressman Griffith.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Mr. Stoll, if you could tell me—you indicated you might lose jobs to other countries. Who is your—who may be your major competitor for your particular product?

Mr. STOLL. China.

Mr. GRIFFITH. And so what you are saying is that if costs continue to go up, and part of those costs are, of course, fines that you pay and the things that you can't figure out, it puts China in a better position to compete with us in the worldwide market for your products. Is that not correct?

Mr. STOLL. That is correct. And as a business, if we have increased costs, regulatory costs imposed on us, then customers—it is market-driven. Customers can go other places.

Mr. GRIFFITH. Yes. And, Mr. McNeely and Mr. Bratton, if I could, you all started to talk about safety belts and harnesses, and your time ran out, and I see that there is a harness laying there on the floor and I would kind of like—I don't know anything about the differences. Is the safety belt like the old lap belt in the car, or what is the safety belt like?

Mr. BRATTON. The safety belt just went around your midsection and it was tied off. The problem was that there were numerous spinal injuries from falling.

Mr. GRIFFITH. So if I make the analogy to the car, like we have been making to some of these others, it would be like the old lap belt in the cars when I was a kid, as opposed to the shoulder belts and the airbags and the lap belt combined. Is that what you are saying?

Mr. BRATTON. I would say so. Yes, sir. What Mr. Stoll was talking to is that the regulations still specifically describe a belt that is not even used anymore because it is not safe.

Mr. GRIFFITH. So technically, if they really wanted to cite you, they could cite you for having the safer equipment. So I could be—using that car analogy, if I was pulled over at a roadblock to check on safety inspection and I had all the latest airbags and a shoulder harness, technically the officer could write me a ticket because I don't have the old-fashioned lap belt.

Mr. BRATTON. Well —

Mr. GRIFFITH. Is that a fair assessment? Go ahead and tell me what the difference is. We do have a TV camera here. I would like you to show the TV folks the four-point harness so they can under-

stand how safe this is who might see this at a later date or who might be looking at the Congressional record at a remote location.

Mr. BRATTON. This is the safety harness that we were written a citation for.

Mr. MICA. We are not going to be able to hear you.

Mr. BRATTON. I am sorry.

Mr. MICA. No problem. We want you to describe it so we have it in the record.

Mr. BRATTON. This is a safety harness that Wake Stone was cited for as being defective.

Mr. Massey, would you approach and show them the defect that we are still fighting?

It is not very obvious.

We also contacted the manufacturer of this harness and asked them if this harness was safe to use, and they issued a written letter stating that this —

Mr. MICA. So the frayed end is this —

Mr. BRATTON. Yes, sir.

Mr. MICA.—is what you were cited on?

Mr. BRATTON. Yes, sir.

Mr. MICA. It is similar to the seat belt?

Mr. BRATTON. Yes, sir, but not as frayed.

Mr. MICA. Thank you. I appreciate that.

Mr. BRATTON. And with the analogy with the car, it is hard to say. It is just like Mack said where you have a turn signal that blinks too slow, or they may say that that airbag that you have is in the wrong place, or that maybe you turned your seat belt or whatever. That is a citation.

Mr. GRIFFITH. And here is where it gets interesting. As I told you all in the beginning, I used to be a criminal defense attorney. If an officer and a sheriff—the laws may be a little bit different in North Carolina, but if an officer pulls somebody over because they have a faulty exhaust system that is not built to the manufacturer's specs and you can establish that it was, in fact, built to the manufacturer specifications, a criminal defendant, everything from that point forward, at least in the Commonwealth of Virginia, any other evidence, if that was the reason for the stop, would be restricted.

So what we are saying is that we have folks who are trying to provide jobs in the community. We hold them to a standard that is higher than we are holding standards when you have due process in the criminal courts. So you are being treated worse than the criminals are. Is that correct?

Mr. BRATTON. That is correct. Yes, sir.

Mr. GRIFFITH. And that would be my opinion, as well. I will tell you that, you know, when you hear these stories—and I have heard these stories in Virginia, too. One that I have heard, and it was a coal mine, they must have 10,000 rollers on a conveyor belt, and one of the mines got cited because they had one roller that wasn't rolling properly out of the 10,000-some rollers. It didn't create any safety effect whatsoever.

I will also tell you that while there was no citation, I believe, written, I was out talking to some miners on a parking lot, and I have had the mine safety training, but one of the folks with me had not had the mine safety training, and somebody spotted com-

ing up the road the MSHA folks. All of a sudden we were being hustled off in a car because—we are not going in the mine, mind you. We were just standing in the parking lot. But there was a fear that standing in the parking lot without having had the mine safety training class could get that mine cited as a violation of safety rules, and all we were doing was talking.

And I can tell you that words can be very powerful, but I don't believe they can call it a mine safety problem when you are just standing in the parking lot talking issues. Would you agree that that is fairly typical of some things that you all are hearing?

Mr. BRATTON. Yes, sir. And also, whoever saw the MSHA vehicle and told you that MSHA was coming is in violation because that is advance notice.

[Laughter.]

Mr. GRIFFITH. I am glad I didn't say where I was exactly.

And, Mr. Bratton, in this era of scarce resources, is it your opinion that MSHA is spending most of its money in enforcement rather than attempting to instruct and train operators?

Mr. BRATTON. Yes, sir. I believe that to be a fact.

Mr. GRIFFITH. And I will tell you sometimes it is frustrating because I am told that 5, 10 years ago, when operators would come—and most of my folks are coal, and we do have aggregates in the district—that somebody would say, "Hey, you need to get this straightened out," or in the case of the harness, "It has gotten a little frayed, it isn't a problem now, but make sure you keep an eye on that," and there wouldn't be a citation written, or there might be a warning written but it was down the road before you started getting fines, and my understanding is now, at least from the folks who talk to me in my district, that they are quick to fine and very rarely do they say, hey, keep an eye on this, or drive a little slower, or get that one roller fixed.

Mr. BRATTON. My understanding is that if they see something that could be interpreted as a violation, that they are required to write that citation. So the inspectors have no leeway to advise on, okay, I see this, this could be a problem down the road, let's take care of it.

Mr. GRIFFITH. Mr. Chairman, if I might take another minute. I know I am over time, but if I could take a minute just to pontificate.

[Laughter.]

Mr. GRIFFITH. One of the problems I think we have in our federal system, and it is creeping into the state systems as well, historically the law was established to promote law and equity, and equity was doing what was fair, even if you didn't meet the black letter of the law; or if you violated the black letter of the law, if that interpretation was unfair in the circumstances, we gave our officials the authority to figure out, okay, wait a minute, that is not a fair interpretation.

Starting at about the end of World War II, this country went away from that, and we are all looking at black letter. That is why the code volumes get bigger every year, because we are trying to do black letter. But my experience is you can't black letter everything, and perhaps we need to reestablish the principles of equity that were founded in the Anglo-American jurisprudence system,

and by banning them, we are making the citizens no longer have confidence.

And thank you, Mr. Chairman. I yield back.

[Applause.]

Mr. MICA. Technically under the rules of the committee, the only one that is really permitted to applaud for Mr. Griffith is your representative, Mr. Meadows.

[Laughter.]

Mr. MICA. So we are all out of order.

[Laughter.]

Mr. MICA. There may be additional questions that we will have. Does anyone have any last-minute questions of the panel?

[No response.]

Mr. MICA. Witnesses, I will advise you that we may submit additional questions to which we would ask you to respond, and your responses will be made part of the record.

I thank you for coming out this morning.

Mr. MEADOWS. I am sorry. Would you yield?

Mr. MICA. I am sorry. I would be glad to yield to the gentleman.

Mr. MEADOWS. I just wanted to again say thank you. The other that I would ask you for the record that we have a few days here, if you will give us additional examples from perhaps other people that were not here today. Mr. Bratton, you are probably in the best position to do that, to submit for the record other examples of where we feel like we have had unfair citations. That would be very helpful.

Mr. MICA. And we would welcome that. And the record is open for seven days. If necessary, we can extend that through your representative, Mr. Meadows. He will make certain that that submission is part of what is referenced in the record today.

So, with that, I will thank you again, Mr. Stoll, Mr. McNeely and Mr. Bratton, for your participation and your testimony today. So, you are excused.

I will call up the second panel. The second panel consists of one witness. That individual is Mr. Marvin Lichtenfels, and he is the Deputy Administrator for Metal/Nonmetal, Mine Safety and Health Administration.

While the staff changes the witness table, I will welcome Mr. Lichtenfels. If you would just remain standing, sir, it is part of our process as an investigative panel to swear in our witnesses. Will you raise your right hand?

[Witness sworn.]

Mr. MICA. Let the record reflect that the witness answered in the affirmative.

I would like to welcome you, sir. Your position is the Deputy Administrator for Metal/Nonmetal Mine Safety. Welcome to you. Since you are the only witness for this panel, you have some leeway as far as time and providing your testimony. As I advised the other witnesses this morning, additional information or testimony you would like to be part of the record, you can request that through the Chair.

So, with that, welcome, and you are recognized.

**STATEMENT OF MARVIN LICHTENFELS, DEPUTY ADMINISTRATOR FOR METAL/NON-METAL, MINE SAFETY AND HEALTH ADMINISTRATION**

Mr. LICHTENFELS. Thank you. Chairman Mica and members of the subcommittee, I appreciate the opportunity to be here today to testify about metal/nonmetal mine safety and health and the actions MSHA and industry have taken to protect the safety and health of the nation's metal and nonmetal miners.

Let me say at the outset that we at MSHA take the concerns of the metal/nonmetal industry very seriously.

Mr. MICA. Sir, they are going to try to get that a little bit closer. Thank you.

Mr. LICHTENFELS. We want to maintain and build on our history of working together to improve mine safety. What we are doing at MSHA, as well as the mining industry, is moving mine safety in the right direction. Compliance is improving in the nation's mines and, most importantly, mine safety is improving with back-to-back years of the lowest injury and fatality rates in mining history.

MSHA has engaged in substantial outreach to metal and nonmetal stakeholders in all areas of the country, including meeting with aggregate associations in North Carolina, Virginia and Florida to discuss issues of mutual concern and identify solutions that will benefit the mining community.

We understand that our working relationships like forming alliances with aggregate associations and others to work together.

As far as the agency's outreach, MSHA has changed the way it rolls out safety and health initiatives. We involve our stakeholders and conduct outreach and training in advance of implementation. We post training on our website so that industry has access to the same training that MSHA inspectors can see.

This year is the 35th anniversary of the Federal Mine Safety and Health Act of 1977 which provides the same protection to metal and nonmetal miners that coal miners enjoy as a result of the Federal Coal Mine Health and Safety Act of 1969. This act has been successful. In 1977, 134 metal and nonmetal miners lost their lives in their workplaces. By 2012, the number had fallen to 16, equaling the record low that was set in 2011.

While we have made significant progress since 1977, too many metal and nonmetal miners are still being injured and losing their lives in preventable accidents. So far this year, there have been nine fatalities at metal and nonmetal mines.

With input from our alliance partners, MSHA has taken several actions to reduce fatality and injury rates even further. These include Rules to Live By, initiated in 2010, which focuses on the most common mining deaths and how to prevent them, Guarding 1 and 2 to reduce violations of MSHA's guarding standard, and a policy letter MSHA published, clarifying MSHA's fall protection standard.

MSHA has renamed the Small Mines Office the Small Mines Consultation Bureau, which has refocused its efforts to better assist small mines and work with the aggregate association to identify those in need of the program's services. This office provides courtesy inspections and on-site visits to explain MSHA's initiatives and help operators understand and better comply with MSHA rules and regulations.

To improve consistency in the application and enforcement standard, MSHA has strengthened its inspector training programs, including implementation in 2010 of a new training program for field office supervisors. MSHA has added a course for inspectors and supervisors on professionalism and consistency to address concerns raised by mine operators.

In January, 2012, the agency implemented pre-assessing conferencing, giving the operators the opportunity to resolve issues prior to conducting citations. In 2012, MSHA conferenced over 2,000 metal and nonmetal citations. To date, 67 percent of those citations have been resolved without litigation. These efforts have been successful. Metal and nonmetal total citations are down 18 percent from 2010 to 2012.

In 2011, the all injury and fatality rate in metal and nonmetal mines was the lowest reported in mining history. Preliminary data for 2012 show these rates have declined even further. Nonetheless, one mining death is one too many, and MSHA's metal and nonmetal program area will continue to do whatever it can, working with the industry, to reduce the number to zero and to keep miners healthy and safe.

Thank you for the opportunity to be here today, and I would be happy to answer your questions.

[Prepared statement of Mr. Lichtenfels follows.]

**Statement of Marvin Lichtenfels  
Deputy Administrator for Metal and Nonmetal Safety and Health  
Mine Safety and Health Administration  
Department of Labor  
Before the  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
United States House of Representatives  
Field Hearing in Bakersville, North Carolina  
June 21, 2013**

Mr. Chairman and Members of the Subcommittee:

My name is Marvin Lichtenfels, and I am the Deputy Administrator for Metal and Nonmetal Safety and Health (MNM) with the Mine Safety and Health Administration (MSHA). I have more than 28 years of experience in mining, including over 5 years with MSHA. Prior to coming to MSHA, I was an independent safety and health consultant for 13 years. Before that, I worked in the mining industry in Pennsylvania for 23 years.

I appreciate the opportunity to appear here in North Carolina today to talk about metal and nonmetal safety and health. MSHA has a history of working with mine organizations and associations throughout the industry, including state aggregate associations and mining interests in North Carolina and elsewhere, to improve consistency and better implement the provisions of the Federal Mine Safety and Health Act of 1977 (Mine Act).

MSHA's mission is to prevent death, disease and injury from mining and to promote safe and healthful workplaces for the Nation's miners. At MSHA, we take this mandate seriously and have taken several actions to improve safety and health in the Nation's metal and nonmetal mines. These actions include meeting with operators and associations to identify areas where health and safety could be improved and working with them to design initiatives and to clarify and improve consistency in the application and enforcement of MSHA standards. I will describe these collaborative efforts, which include our Guarding initiative and the clarification of the Fall Protection standard, later in my testimony.

We have changed the way MSHA rolls out its safety and health initiatives. Stakeholder outreach and education occurs in advance of implementation, followed by the same training for the mining industry and stakeholders that inspectors receive. The training program is posted on our web site so everyone can receive the same training and message before the enforcement component is initiated. MSHA also provides this information to training instructors to be included in the training miners receive.

The actions MSHA is taking, along with those by the mining industry, are improving compliance, and most importantly, have reduced injuries, illnesses and deaths to the lowest levels ever recorded in mining history. From 2010 through 2012, citations and orders declined 18 percent in the mining industry overall and by 18 percent in the metal and nonmetal sector. Most importantly, figures released for 2011 and preliminary numbers for 2012 show that these two years were the safest in mining history, with metal and nonmetal leading the way. MSHA has worked closely with the mining industry to achieve these results.

MSHA's MNM program enforces the Federal Mine Safety and Health Act of 1977 at all metal and nonmetal, stone, and sand and gravel mining operations in the United States, and frequently inspects mine sites to determine compliance with health and safety standards. In FY2012, MNM conducted over 26,000 inspections. When inspectors believe there are violations of health or safety standards, they are required to issue citations or orders to mine operators, who must immediately abate the hazards created by those violations.

Other important activities required by the Mine Act include investigating mine accidents, hazard complaints, discrimination complaints reported by miners, and whether certain violations should result in criminal charges because they were knowing and willful. MNM also responds to compliance questions from the mining industry through emails, letters and phone calls, reviews mine operators' mining plans, and assists operators in developing education and training programs for miners.

MNM has a headquarters office in Arlington, Virginia, 6 district offices, and 47 field offices and field duty stations located throughout the United States and Puerto Rico. There are more than 12,000 metal and nonmetal and milling operations producing nearly 100 different minerals and commodities and employing more than 225,000 miners, including contractors.

This year marked the 35<sup>th</sup> Anniversary of the Federal Mine Safety and Health Act of 1977. Enactment of that legislation provided metal and nonmetal miners certain protections for the first time. Such protections include mandated inspections -- twice a year at surface mines and four times a year at underground mines -- stringent enforcement provisions and mandatory standards, and other protections already provided coal miners in the 1969 Coal Mine Health and Safety Act. The Mine Act of 1977 reduced injuries and illnesses and saved lives.

Prior to the passage of the 1977 Act, on average one miner was killed and 66 injured each day in mining accidents nationwide. In 1977, there were 273 mining fatalities in the U.S., 134 of which occurred in metal and nonmetal mines. By contrast in 2012, there were 35 fatalities, including 16 at metal and nonmetal mines, equaling the record low set in 2011.

In 1977, the total all-injury rate at all mines in the U.S. was 9.55 injuries per 200,000 work hours. For metal and nonmetal it was 6.63. By 2011, the total all-injury rate at all mines had fallen by 71 percent to 2.73 injuries; likewise the rate for metal and nonmetal had fallen by 66 percent to 2.28 injuries. These were the lowest rates in the history of mining, and preliminary numbers for 2012 indicate that the all-injury rates have fallen even further.

In 1977, the fatality rate, which is the number of deaths per 200,000 work hours, in all mines was .0645, and .0600 in metal and nonmetal mines. By 2011, the fatality rate decreased in metal and nonmetal by 86 percent to .0084, the lowest in mine history. Preliminary numbers for 2012 for all mines and for metal and nonmetal mines, indicate that the fatality rates were even lower, falling to new record lows.

While these statistics show we have made significant progress since 1977, too many miners are still being injured and losing their lives in preventable accidents. MSHA's activities, as well as those in the mining industry, are designed to reduce these rates even further.

In January 2010, MSHA initiated its key fatality prevention program -- "Rules to Live By" -- and conducted outreach and education to the mining industry. The program focuses attention on the most common causes of mining deaths and the related standards. As Assistant Secretary Main has said, in order to prevent fatalities, we must focus attention on what is causing them and communicate that to the mining community. In November 2010, MSHA launched "Rules to Live by II," addressing coal mines, followed by "Rules to Live by III" in January 2012.

“Rules to Live By I: Fatality Prevention” are 24 frequently cited standards (11 in coal mining and 13 in metal and nonmetal mining) that address circumstances or conditions that cause or contribute to fatal accidents in the mining industry in nine accident categories.

“Rules to Live by II: Preventing Catastrophic Accidents” are standards addressing circumstances that were cited in connection with major mine disasters over the last ten years, and which contributed to five or more fatalities.

Finally, “Rules to Live By III: Preventing Common Mining Deaths” are 14 safety standards, eight in coal mining and six in metal and nonmetal, addressing circumstances cited in connection with at least five mining accidents and resulting in five deaths during the ten-year period from January 1, 2001 to December 31, 2010.

Just months after we initiated “Rules to Live By,” on April 5, 2010, the tragedy at the Upper Big Branch underground coal mine needlessly took the lives of 29 miners. Even though this tragedy occurred in a coal mine, it reminds us of the need to be vigilant and continuously look for ways to improve mine safety generally. MSHA began taking actions immediately. It sent notices to the mining industry on the operator’s responsibility to comply with the law and regulations, initiated enhanced enforcement actions to focus MSHA’s enforcement efforts where MSHA believed miners were most at risk, made administrative and organizational changes to make the Agency more effective, and used its regulatory authority to help prevent similar tragedies. MSHA will continue to focus its rulemaking on those areas that will have the biggest impact on mine safety and health.

One of MSHA’s most effective enhanced enforcement tools has been its impact inspections, which began in April, 2010. These are targeted monthly inspections at metal and nonmetal and coal mines that merit increased agency attention due to their accident record, poor compliance history or particular compliance concerns. Since beginning this initiative, MSHA has conducted over 600 inspections and issued nearly 10,300 citations, more than 900 orders, and 44 safeguards.

A review of mines receiving impact inspections between September 2010 and December 2012 shows improvement in compliance. As of March 31, 2013, the total violation rate among those mines was down 17 percent; the total Significant and Substantial rate was down 23 percent; the rate of unwarrantable failure violations was down 51 percent; and the lost injury time was down 13 percent.

In September, 2010, MSHA made critical improvements to the Pattern of Violations (POV) process, another important enforcement tool, meant to rein in operators with serious and chronic violations at their mines.

A review of the violation and injury records of the 3 metal and nonmetal mines and 19 coal mines receiving Potential Pattern of Violations notices that had at least one complete inspection since then shows substantial improvement in compliance. As of March 31, 2013, the total violation rate among these mines was down 36 percent; the total Significant and Substantial violation rate was down 58 percent; the rate of unwarrantable failure violations was down 81 percent; and the lost-time injury rate was down 42 percent.

Despite revisions, the POV enforcement process was still flawed, due to the regulation in place governing its use. It was time-consuming and difficult to place a mine in a pattern of violations despite its history of serious noncompliance. In January 2012, MSHA published a final Pattern of Violations rule, which allows MSHA to act swiftly and decisively to address the nation's most dangerous mines. MSHA updated its POV web tool so mine operators can regularly track compliance data and, using this information, implement safety and health measures to prevent being placed on a POV in the first place.

In addition, since 2011, MSHA began providing quarterly fatality information to the mining industry and trainers, including best practices to prevent fatal injuries.

MSHA notifies the industry immediately when it identifies a particular hazard or trend. For example, in April, MSHA published a hazard alert regarding pipe-handling safety and related fatal accidents at metal and nonmetal mines. The alert laid out best practices for preventing these types of accidents. MSHA issued a safety alert about the two metal and nonmetal miners who were killed in January of this year, urging operators to assess the hazards associated with every work task conducted in their mines, particularly infrequent work tasks, and to take action to remove or control those hazards. Hazard alerts are issued frequently to educate and inform the industry about hazards and fatalities and the measures that mine operators should take to prevent them.

The potential for catastrophic accidents is not limited to coal mining. MSHA identified a sharply rising incidence of pulverized coal explosions occurring in the fuel firing systems of cement facilities across the Nation. Although no fatalities occurred, several

explosions resulted in very serious, sometimes disabling injuries. There were numerous near-misses, and property damage was high.

To help prevent a multi-fatality accident, MSHA sent a warning letter about fuel firing explosions to every one of the more than 100 cement plant managers in the Nation. With the cooperation of the cement industry, MSHA investigated approximately 20 explosions, determined the root cause, and developed a comprehensive analysis of risk factors and safe design/safe operating best practices. The agency produced a series of illustrated case studies that identified the causes and recommended actions to prevent recurrence, and incorporated them into a photo-illustrated training program on CD. In December 2009 and January 2010, MSHA distributed the CDs throughout cement and lime industries. This training program was also used to train MSHA's metal and nonmetal field office personnel.

The number and severity of coal explosions began to decline as soon as MSHA initiated these intervention strategies. No miners have since been injured, and reports of coal explosions in the cement and lime industries, which once numbered as many as two or three a week, are now a rarity.

MSHA is deeply committed to supporting the rights of miners to report safety violations and to protect those workers in the event their employer retaliates against them. The agency is doing more to enforce the anti-discrimination provisions of the 1977 Act, particularly in light of the tragedy at the Upper Big Branch mine. In the four years prior to the disaster, no one working at that mine filed a hazard complaint with MSHA, even though post-accident investigations documented long-standing problems at the mine. In 2012, the Agency, working with the Office of the Solicitor of Labor, filed 46 temporary reinstatement requests and 34 section 105(c) discrimination cases on behalf of miners, the most ever in a year, according to MSHA records.

MSHA has made changes to the Small Mines Office, renamed the Small Mines Consultation Program (SMCP), to better serve the needs of small metal and nonmetal mining operations. Assistant Secretary Main asked that the SMCP and state aggregates associations work together to help small mines comply with the Mine Act and protect miners. As a result, MSHA was able to successfully develop the "enhanced 5002 initiative" with feedback from aggregates associations. That initiative assists operators in protecting miners from harmful airborne contaminants by conducting dust, gas, mist, and fume surveys to determine the adequacy of control measures. MSHA rolled out this initiative, as well as inspection procedures and training materials for the industry,

at a meeting with stakeholders in December 2010. The National Stone, Sand and Gravel Association and the Industrial Minerals Association attended the meeting as did representatives from labor and the media.

SMCP currently has about 20 field professionals located around the country to meet with state and local aggregate associations or groups of small operators to discuss the 5002 initiative and other issues of interest to the industry. As a result of these meetings, the aggregates associations have identified several operators in need of compliance and other assistance.

SCMP specialists have been providing operators courtesy inspections, explaining MSHA initiatives, such as the 5002 initiative, and helping operators and contractors better understand MSHA rules and regulations and how to comply with them. Several small mine operators and mining associations have reported that they are benefitting from this assistance.

In January 2012, the agency implemented pre-contest conferencing, giving operators the opportunity to resolve issues prior to contesting citations. In 2012, MSHA held conferences on more than 2,000 metal and nonmetal citations and orders. To date, 67 percent were resolved without contest.

To improve consistency in the application and enforcement of its standards, MSHA, in 2010, implemented a new biennial training program for field office supervisors. These supervisors are now in their third round of training. MSHA also improved training for its inspectors and conducted joint training with the FBI for its investigators. MSHA added a course on professionalism and consistency to its training curriculum for inspectors and supervisors to address concerns raised by mine operators and others on matters of compliance and inspector comportment.

MSHA has engaged in substantial outreach to metal and nonmetal stakeholders in all areas of the country. For example, we have met with the North Carolina Aggregates Association the Virginia Transportation and Construction Alliance and the Florida Limerock & Aggregate Institute to discuss areas of mutual concern and identify ways in which we can better improve mine safety and health and compliance. The agency has expanded its working relationships by forming alliances with aggregates associations, national labor organizations and state mining agencies, particularly with the Interstate Mining Compact Commission (IMCC). One issue on which MSHA and the IMCC have collaborated is identifying and inspecting active impoundments around the country.

With input from our alliance partners, we have taken several other actions to improve compliance and keep metal and nonmetal miners safe. For many years, the most commonly cited violation was for guarding of machinery and conveyor belts. Working with our alliance partners, including the National Stone, Sand and Gravel Association, the Portland Cement Association, the Industrial Minerals Association of North America, regional and state aggregates associations (such as California's CalCIMA), and labor organizations, MSHA developed detailed guidance for operators and inspectors in complying with the standard. Guarding I, on conveyor belts, which we first piloted with state aggregates associations, was published in June, 2010, followed by Guarding II on all other equipment, which was published in October 2012. We rolled out these programs in advance to our stakeholders and provided training to industry and MSHA inspectors.

These guides, which are available on our web site, provide metal and nonmetal operators and MSHA inspectors with comprehensive, detailed and photo-illustrated information regarding guarding compliance. MSHA's guarding initiatives have improved compliance across all of MNM's safety and health districts. Through the first half of FY2013, guarding citations and orders were reduced more than 40 percent from 2010 levels.

In June 2012, with input from industry and labor, MSHA published a policy letter clarifying MSHA's fall protection standard. Previously, there had been general confusion about the MSHA standard and some inconsistencies in its enforcement. Compliance has improved since the policy letter came out. In FY2011, MSHA issued 391 citations and orders for violations of the fall protection standard. By contrast, in the first six months of FY2013, 116 citations and orders were issued.

There are a number of other examples of MSHA and the aggregates industry working together to advance mine safety, such as "Safety Pro in a Box," which provides online tools and resources that operators can use to improve training and safety and "Rip-N-Share" articles that MSHA writes for aggregate trade magazines. In addition, MSHA and the Portland Cement Association Alliance send quarterly letters to cement industry CEOs on industry-specific areas of mutual concern.

MSHA continues to improve and expand on its successful programs based on the positive feedback we have received from the industry and the mining community as a whole.

As a result of the initiatives taken by MSHA and the mining community, including the work of the technical taskforce MSHA formed with the National Stone, Sand and Gravel Association to advise the Agency on enforcement consistency and compliance, overall compliance is improving. In 2010, Metal and Nonmetal issued 73,863 citations and orders. This number dropped in 2012 to 60,680 citations, a decline of 18 percent.

At the same time, the number of metal and nonmetal mines remained steady in 2012 at 12,193, while the number of miners increased from 237,772 in 2011 to 250,310 in 2012.

In the end, the most important measure of success is whether miners are returning home to their families healthy and safe after their shifts are over. As I stated earlier, in 2011, the total all-injury rate and the fatality rate at all mines was the lowest ever recorded in mining history. Preliminary data for 2012 show that these rates have declined even further. In both years, metal and nonmetal led the way with the lowest injury and fatal rates in the mining industry.

Nonetheless, one mining death is one too many, and MSHA's MNM program will continue to do whatever it can, including working cooperatively with the industry, to reduce that number to zero and to keep miners healthy and safe.

Thank you for inviting me here today, and I am happy to answer any questions you may have.

Mr. MICA. Well, thank you. I will start with some questions.

You have heard, again, some industry representatives say sort of the inconsistency with which they imposes fines and penalties and the lack of a sort of standard interpretation of the requirements. Would you like to respond in general or to any of the specific instances that were cited?

Mr. LICHTENFELS. In general, sir, I would like to say that there have been inconsistencies and we are trying to address those in a number of ways. I mentioned the guarding and fall protection particularly.

Mr. MICA. When was that?

Mr. LICHTENFELS. Regarding PowerPoint, I mentioned —

Mr. MICA. You had said that you had some programs, I guess, to try to get the standards, standard equity in training your MSHA inspectors?

Mr. LICHTENFELS. Right. We developed training programs on professionalism.

Mr. MICA. Tell me about those. Are some of them the most recent, or what is the history?

Mr. LICHTENFELS. It started in 2010 and 2011, and we expanded it to include professionalism. Our supervisors attend training every two years. Our inspectors receive training every two years.

Mr. MICA. It is a little hard to hear you. Does that thing extend any further, or maybe you can come up closer to it?

So, you have heard the complaints. And again, no one benefits by anyone being injured, and certainly not by a fatality, and I am sure the cost of a fine is miniscule compared to loss of life and the costs incurred when something goes wrong. However, these nine fatalities that you have cited, had these companies previously—do you know if they had been cited, and were there any instances of safety violations that were cited in the nine fatalities that led to their deaths?

Mr. LICHTENFELS. Yes. Without having the specifics, there were citations issued in these situations.

Mr. MICA. But, I mean, had you—a citation was issued after the death.

Mr. LICHTENFELS. Right.

Mr. MICA. I was wondering if, through your inspection, you had identified a situation that would have—or any of these folks were guilty of a violation before the fatality. Was the system working, and then someone didn't adhere to your recommendation or your citation?

Mr. LICHTENFELS. I don't have that information, but I can —

Mr. MICA. For the record, if you could provide that to the subcommittee.

The other issue, the lawyers touting the 35 years, have you heard also—in fact, the gentleman sitting in the same seat there, Mr. Stoll, and others said that the law is out of date. Would you concur with that? One.

And then, two, has the administration or the agency recommended to Congress, or have there been any attempts recently to update the statute?

Mr. LICHTENFELS. The standards are continually reviewed. The rulemaking process is a long and tedious effort. The one effort that we made recently was fall protection.

Mr. MICA. That is a rule. I am talking about statute. Quite specifically, one of the provisions of statute was cited as out of date according to modern technology or equipment.

Mr. LICHTENFELS. I believe Mr. Stoll was talking about fall protection standards?

Mr. MICA. Yes.

Mr. LICHTENFELS. Yes. That is what I was going to say that we addressed by policy letter, and what we did —

Mr. MICA. But again, we have four members of Congress here. We change the law. The law was written in 1977. Has the Mine Safety Administration or the Obama Administration, or prior to that the Bush or somebody, have they recommended changes to Congress in the law that you are aware of?

Mr. LICHTENFELS. No. No, sir, not that I am aware of.

Mr. MICA. Well, again, I think one of the things we are going to do from this hearing—these hearings are nice, but if you don't do anything to follow up, short of a lot of rhetoric. So I will ask Mr. Meadows to head up an ad hoc group to bring together—I think we are going to have to bring in labor folks. Mr. Meadows' staff tells me that the Labor Committee would oversee the authorization of that law.

But I think we are going to look at trying to get from the administration—I don't care which administration it is. But if there are problems with the law, or the law is 35 years old, it needs to be updated, and they should provide the leadership to give us some recommendations.

And then also, the committee of jurisdiction, we will ask them if they would consider—probably technically, if they won't do it, then we can do a joint one, or we could do it ourselves, is follow up in Washington and drag the administrator in and some of the other folks and see. I will have to find out where they have attempted to do any changes in the law.

How long have you been with them?

Mr. LICHTENFELS. Five years.

Mr. MICA. Any attempt that you know of?

Mr. LICHTENFELS. No major attempt.

Mr. MICA. All right. Well, maybe this will spark or be the genesis for looking at the law itself.

How many inspectors do you all have? What is your budget?

Mr. LICHTENFELS. Metal/nonmetal has about 350 inspectors total, about 600 FTE.

Mr. MICA. Three hundred and fifty inspectors?

Mr. LICHTENFELS. Yes.

Mr. MICA. And what is your budget?

Mr. LICHTENFELS. The budget was approximately \$9 million prior to sequestration.

Mr. MICA. Now, I saw 143—was that metal and coal? \$154 million in 2011, \$154 million in fines.

Now, what is nonmetal? Do you know?

Mr. LICHTENFELS. I don't have it with me, sir.

Mr. MICA. But most of that is in coal?

Mr. LICHTENFELS. Um —

Mr. MICA. Okay. So you don't know how much was collected in fines?

Mr. LICHTENFELS. No. I don't have that data.

Mr. MICA. Do you know from last year?

Mr. LICHTENFELS. I don't have it with me.

Mr. MICA. It is interesting. One fellow here said \$143,000 in fines to that one company, and I am sure that that is just part of the cost because they probably had to retain counsel or in-house counsel and the time spent appealing.

You had cited 3,000 citations. What year was that in?

Mr. LICHTENFELS. That was in 2012.

Mr. MICA. In 2012?

Mr. LICHTENFELS. Two thousand citations that were accomplished, I believe.

Mr. MICA. Two thousand citations in 2012, and you don't know how much the fines were. You said 67 percent were what?

Mr. LICHTENFELS. Settled without further litigation.

Mr. MICA. So were they all litigated or contested?

Mr. LICHTENFELS. No, no. Those were —

Mr. MICA. Some people just pay up and give up, give up and pay up?

Mr. LICHTENFELS. Right; yes. Yes.

Mr. MICA. Sixty-seven percent, I am really curious about the figure. Please provide that to the committee, and the total fines for 2,000. I am just curious as to what the average fine was and was there a category of lead fines and violations of the 2,000?

Mr. LICHTENFELS. The standard most frequently cited?

Mr. MICA. Yes, right. What is the violation most —

Mr. LICHTENFELS. Typically, electrical violations. Guarding used to be number one.

Mr. MICA. What? Guarding?

Mr. LICHTENFELS. Guarding used to be the number-one cited standard.

Mr. MICA. I am sorry. I didn't, again, understand you. Guardian?

Mr. LICHTENFELS. Guarding violations.

Mr. MICA. Guarding?

Mr. LICHTENFELS. Yes.

Mr. MICA. Guarding the —

Mr. LICHTENFELS. Conveyor belts, guarding of conveyor belts to prevent accidental contact.

Mr. MICA. Oh, okay. It is an actual guard?

Mr. LICHTENFELS. Yes.

Mr. MICA. Okay. And that was one, actually, that was cited quite a bit by the panelists as you all not having consistent standards.

Mr. LICHTENFELS. Yes.

Mr. MICA. So the highest violation in the past has been on an infraction for which you don't have the standards. Is that what you are testifying?

Mr. LICHTENFELS. What I would like to say, Mr. Chairman, is that in 2010 we developed a PowerPoint to provide guidance to industry, and it was in cooperation with the industry, the National Stone, Sand and Gravel Association and a number of other associations, and we put the first PowerPoint out on guarding conveyors,

and we followed it up in 2012 with a second PowerPoint on guarding everything else. And since that point, the guarding violations are down 40 percent. So the effort was successful.

Mr. MICA. So there has been—that is no longer your primary violation?

Mr. LICHTENFELS. Right.

Mr. MICA. I think what you heard here today was a plea for some consistency and common sense. The other thing, too, is you do not—instead of fining them, do you not write them a warning or something and say—like this belt that they showed, we had one belt on the screen and the other one from a harness that they brought here. If it appears to be fraying, can you say, “In 30 days correct the situation or you will be fined”? I mean, do you approach it from a standpoint of having them actually take some action, or is this just fine city, where you come in and levy the fine?

Mr. LICHTENFELS. The Mine Act requires an MSHA inspector to cite a violation if he sees it.

Mr. MICA. The what?

Mr. LICHTENFELS. The Mine Act requires an MSHA inspector to cite —

Mr. MICA. Is that your interpretation, or is that —

Mr. LICHTENFELS. Yes, it is. Yes.

Mr. MICA. Well, see, there again, I think that —

Mr. LICHTENFELS. If I could answer —

Mr. MICA. The law—we might want to look at that. I am not as familiar with MSHA. I don’t have mining that I know of in my district. I would have to check with the CIA on that.

[Laughter.]

Mr. MICA. In any event, just a sort of commonsense approach. I remember my dentist, who has since passed away, probably from dealing with OSHA. But I went in one day to get my teeth cleaned or something, some torture he did to me, and he shows me a bottle of Whiteout. He had gotten fined with OSHA for having this chemical, a bottle of Whiteout on his desk. We went to town on that one. I thought we had changed some of the procedures for OSHA to give some warning. Maybe we need to go back and look at your agency.

So three guys show up at one plant? Is this the nonmetal, your 350?

Mr. LICHTENFELS. Yes, yes.

Mr. MICA. And how many mines do the 350 cover?

Mr. LICHTENFELS. Slightly over 12,000 mines.

Mr. MICA. Twelve thousand? So they try to visit once or twice a year?

Mr. LICHTENFELS. The Mine Act requires underground mines to be inspected four times a year and surface mines two times a year.

Mr. MICA. Four and two. And you are meeting that?

Mr. LICHTENFELS. Yes.

Mr. MICA. Okay. And they show up in pairs of three sometimes? Is that customary?

Mr. LICHTENFELS. That wouldn’t be customary, no. Normally it is one —

Mr. MICA. I know that sounds kind of rude, rude to show up to someone who hasn’t had any fines. We heard that testimony today. Have you heard that incident, where three show up and say, you

guys haven't been fined, we are going to find something, and then harass them?

Mr. LICHTENFELS. No, I was not aware of that.

Mr. MICA. Do these guys, the operators, have some ability to—not whistle blow, but to let the agency know that there are people who are exceeding reasonable approaches to enforcement?

Mr. LICHTENFELS. We have formed alliances with a number of state associations, and we ask —

Mr. MICA. But someone overseeing the 350, or you, is the only thing for them to do is call you up anonymously and say they busted our chops and they are just not being fair? How does someone say that there are poor performers? I mean, you probably have 325 of these guys who are doing their job every day, minding their P's and Q's, but it sounds like you have some people who are harassing folks unduly. Is there an appeals process or some way that they could whistle blow?

Mr. LICHTENFELS. There is no formal process, but we do get phone calls and emails and letters, and we respond —

Mr. MICA. I think that is another thing, Mr. Meadows, when we are looking at revising the law—I mean, the reference would tell us that every dog has his day in court, but it doesn't sound like every mine operator has a fair process.

Mr. LICHTENFELS. There is a formal process for contesting a violation.

Mr. MICA. But that is not what I am talking about. That sounds like it is fairly expensive. Also, I would like to see some resolution. Maybe we can get these things over in a hurry. I think the first thing is the responsibility needs to be changed just from the enforcement. I could see a certain kind of violation where they would be cited and fined immediately, but others in which there is some ability to correct the situation, and then a fine imposed if they don't comply.

So I think we need to go back and look at the whole law and make it make a little bit more sense. I would like to see the recommendations, and I think we could convene with some of your folks, too.

The other thing, too, is I heard that there are international standards?

Mr. LICHTENFELS. Yes.

Mr. MICA. And you all comply to international standards, I imagine. And then you go above and beyond that for U.S. standards. Would that be a fair description?

Mr. LICHTENFELS. There are consensus standards such as the National Electric Code, the ISO standards, and various other standards. The mine standards took those into consideration when they were drafted, but they were drafted in the mid-1980s. Most of them accept the prior standards that were in effect from years before that.

Mr. MICA. And again, I think it is important that that be updated. On mine standards, is there like an international—I don't know. Again, I am learning. Is there an international mine safety standards panel within whatever it is?

Mr. LICHTENFELS. There are some international committees.

Mr. MICA. Do we belong?

Mr. LICHTENFELS. We participate, yes.

Mr. MICA. And also for the record, maybe you could tell us the last participation, find out from your folks what our participation level has been, and it would also be interesting where we differ, where the United States has different standards from the international, because it sounds like even the manufacturers are having difficulty getting standards out of your agency. Again, the best practices, that is what we want, or the best configuration of equipment.

Mr. LICHTENFELS. If I could address two of those issues, the fall protection was an example of what we did to try to clarify a standard. Many of our standards are considered performance standards where the operator finds the best way to comply with the standard, and then the inspector shows up and decides whether it meets our standards. It is difficult because it is not specific in many cases. But we give the operator leeway to try to comply with it.

One of the problems with the fall protection standard that was read this morning was that it didn't have a number of what height there was a danger of falling from. It just said where there is a danger of falling. So we enlisted the industry, the inconsistency problem, what is a hazard, what is not a hazard, and we by policy letter adopted a portion of the OSHA standard that said anything above 6 feet is a hazard and needs to have fall protection. I think it was well-received by industry, that they now had a number that they could comply with and at least made it a little more clear, and we tried to do that with fall protection, and we tried to do the same thing with the guarding PowerPoints, and I think that has been well-received by industry. Our hope is to continue to do that as these issues come up.

Mr. MICA. Thank you.

Mr. Meadows, our Vice Chairman, go ahead.

Mr. MEADOWS. Thank you, Mr. Chairman.

And I understand that you are not the one who is doing these inspections. I saw you over there writing copious notes. Is there anything that alarms you today about what you have heard here from our three previous witnesses?

Mr. LICHTENFELS. Well, I am concerned about the inconsistencies, and if three people showed up for that purpose, I am a little concerned about that, and I will look into that.

Mr. MEADOWS. But it is not just the three people because we had—I mean, the majority of the people here stood up and said the same thing.

Mr. LICHTENFELS. Yes.

Mr. MEADOWS. So, inconsistencies. So how do you, as a deputy administrator, plan to change that?

Mr. LICHTENFELS. Well, I think we are making some headway. I believe that, with the training that we have put in place, there have been fewer complaints.

Mr. MEADOWS. In your budget you say training, but your budget—and you had renamed something to talk about how you were going to train, and I think in your testimony you talk about renaming it, but your budget doesn't reflect a training emphasis. It reflects an enforcement emphasis. So why would your budget not match with your testimony?

Mr. LICHTENFELS. What I am referring to is training our own inspectors.

Mr. MEADOWS. Oh. So you are going to support training for your inspectors?

Mr. LICHTENFELS. No. No, sir. We have been training our inspectors. We ask them to get 48 hours of training every two years.

Mr. MEADOWS. To write better citations? What do you do?

Mr. LICHTENFELS. To promote consistency, to understand the standards. We go over a large number of subjects.

Mr. MEADOWS. So do you give them raises based on how consistent they are?

Mr. LICHTENFELS. No, sir. That is not the way —

Mr. MEADOWS. So they could be inconsistent and still get a raise.

Mr. LICHTENFELS. They get evaluated by their supervisor based on their performance.

Mr. MEADOWS. So that performance is based on how many citations they write?

Mr. LICHTENFELS. No, sir.

Mr. MEADOWS. So what is your matrix for evaluating their performance?

Mr. LICHTENFELS. Do they complete their inspections.

Mr. MEADOWS. So as long as they do two inspections on surface mines —

Mr. LICHTENFELS. That is only part of it, sir. There are reports they have to complete, and the citations —

Mr. MEADOWS. That is what I am trying to understand. I mean, how do you evaluate whether they are doing a good job or not?

Mr. LICHTENFELS. The procedure is the supervisor in the field offices reviews everything that is written by an inspector.

Mr. MEADOWS. So he reviews the citations that are written by the inspector?

Mr. LICHTENFELS. Yes, and he travels with that inspector at least once a year, but in most cases more often, to evaluate their performance in the field.

Mr. MEADOWS. Is there a slide? Can you put up that slide?

This slide indicates a downward trend from 2000 to 2012 in terms of the incident rate on aggregate operations. And you can see it was trending down, and then all of a sudden what we saw is in about 2007 a huge spike in fines. There didn't seem to be really any correlation between fines and safety according to this particular one. It looks like fines went up 300 percent, and yet there is no correlation. Can you explain why that is?

Mr. LICHTENFELS. Part 100, which determines how a penalty is assessed.

Mr. MEADOWS. What was that?

Mr. LICHTENFELS. Part 100, 30 CFR Part 100. That is the standard that determines how a citation—what—the assessment for a citation. That was revised in 2007.

Mr. MEADOWS. Who revised it? Congress didn't revise it; is that correct?

Mr. LICHTENFELS. MSHA revised the standard.

Mr. MEADOWS. So that is something that you —

Mr. LICHTENFELS. That was based on following the 2006 disasters that occurred, and Congress felt that the penalties may not have been high enough.

Mr. MEADOWS. But we see Congress was wrong there. I mean, I know that comes as a shock to everybody.

[Laughter.]

Mr. MEADOWS. But if you are saying that Congress said there is a direct correlation with fines, this chart would say that there is not. Do you agree with that?

Mr. LICHTENFELS. It certainly looks that way.

Mr. MEADOWS. Why don't we go back to the pre-2006 way of doing business? You know, we are losing jobs here. It boils down to we may get to zero fatalities. The way that we get to zero fatalities is if we have zero jobs, we will get there. I mean, that is how you get there.

So my concern is that for every time we make burdensome regulations, it means, as my colleague from Virginia pointed out, it means jobs going to China, and we can't afford any more jobs going to China. Do you believe we can afford any more jobs going to China?

Mr. LICHTENFELS. Jobs are very important, sir.

Mr. MEADOWS. So you wouldn't be in favor of anything that sends more jobs to China?

Mr. LICHTENFELS. No.

Mr. MEADOWS. Okay. So let's go back to the citations, then. So if we went back to the 2006 way of doing citations, do you see that making any effect really in terms of anything? Because it is trending down anyway at this point.

Mr. LICHTENFELS. If I could say that MSHA is in the process of revising Part 100. It has been sent over —

Mr. MEADOWS. To make it worse, or better?

[Laughter.]

Mr. LICHTENFELS. It will be put out for comment. OMB is reviewing it. It will be put out for comment, and then —

Mr. MEADOWS. Okay. Is there a matrix today where if I had a certain kind of violation, I know that I am facing a \$1,000 fine?

Mr. LICHTENFELS. It can be determined through Part 100, yes.

Mr. MEADOWS. So there is a matrix. You could give me this thing that says that if I have a seatbelt that is frayed, I know exactly what the charge is going to be. I don't believe that —

Mr. LICHTENFELS. It could be provided, yes.

Mr. MEADOWS. What do you mean, it could be provided? Has it been provided to all of these guys here?

Mr. LICHTENFELS. There is a point system that is used for the assessment process that is based on the history of previous violations at a mine.

Mr. MEADOWS. Okay, that hits on another area, the history of previous violations. We heard testimony earlier from the Association where they talked about that it is easier to just pay some of the fines. The problem with paying the fines is that when you do that, you now have a history of violations. So it requires them to hire litigation to go after defending themselves on some of the ridiculous stuff we have seen here today, because if they don't, then they are what you would call an habitual violator, and that is not

fair. Instead of just saying we are going to make you have to defend yourself because, if not, we are going to come back and we are going to penalize you greater. Is that true?

Mr. LICHTENFELS. History is considered as one of the factors. Yes, sir.

Mr. MEADOWS. So it is true that if I don't appeal, that you are going to consider me a violator.

Mr. LICHTENFELS. The assessment is based on history.

Mr. MEADOWS. Either way, it is a problem, as the Chairman has pointed out. Either way, it is a real problem. So when we see this, you are saying it is open now for comment. Comment from who? OMB is looking at it. Comment from the guys that you are fining, or comments from the 350 people that are working for you?

Mr. LICHTENFELS. No, that is for public comment.

Mr. MEADOWS. So who has been noticed at this point for this public comment from OMB?

Mr. LICHTENFELS. I'm sorry?

Mr. MEADOWS. Who has received the notice to make comments?

Mr. LICHTENFELS. It has not reached that stage yet, sir.

Mr. MEADOWS. Okay. So —

Mr. LICHTENFELS. It is the same review, and then there will be a proposed rule, and then there will be —

Mr. MEADOWS. So what is the causal point of why it is being reviewed? I mean, who decided that we are going to review that?

Mr. LICHTENFELS. I don't know that.

Mr. MEADOWS. So, your boss?

Mr. LICHTENFELS. Somebody higher than me.

Mr. MEADOWS. Somebody higher than you decided. And what was the causal reason why you are reviewing that?

Mr. LICHTENFELS. I don't know.

Mr. MEADOWS. Can you get that to this committee?

Mr. LICHTENFELS. Yes.

Mr. MEADOWS. Okay. I want to finish up, and I appreciate the Chair's indulgence. Let me finish up with just a couple of more.

You mentioned PowerPoints, that you have come out with a few PowerPoints. Are those PowerPoints, if the miners follow those PowerPoints, you can assure us that there are not going to be citations with violations there?

Mr. LICHTENFELS. I would hope so.

Mr. MEADOWS. You would hope so.

Mr. LICHTENFELS. Yes.

Mr. MEADOWS. So will you, for the record, today say if they follow those and they get citations, that your agency will waive that? Will you say that for the record today?

Mr. LICHTENFELS. I will say if they follow that PowerPoint, they should not receive a citation.

Mr. MEADOWS. I understand "should not." But that's different. They should not have gotten some of the citations they have already gotten, in my opinion. What I am asking you is would you waive those and just concede that those are out of line?

Mr. LICHTENFELS. If they brought that PowerPoint in to prove their point, we would certainly consider that, sir.

Mr. MEADOWS. I will tell you, this is very frustrating just to hear what we are hearing. We are talking about people's lives. We are

talking about jobs. We are talking about putting people out of work.

I want to finish with this last. You said that under MSHA, that you were required to write a citation. I have read through reams of this. Some people say that I just can't sleep, so I read all this crazy stuff, but it is your interpretation that it requires a citation. It sounds like there is a whole lot of discretion, because when I read it, it doesn't look like it requires a citation. My interpretation would be different than yours. Are you sure that the law says that you have to write a citation?

Mr. LICHTENFELS. That is our interpretation.

Mr. MEADOWS. Well, let me show you how unfair that is.

Mr. LICHTENFELS. You have to observe a violation before you write it up.

Mr. MEADOWS. Okay. That safety belt that is here, is the safety belt still here? Show that to the gentleman, because I know he didn't get to see it. Be careful, because you may trip over an MSHA violation right there.

[Laughter.]

Mr. MEADOWS. So is that something that you believe should have been cited?

Mr. LICHTENFELS. If Mr. Bratton said he had a letter from the manufacturer saying it was safe, I would think it should be okay.

Mr. MEADOWS. So you are saying that it should have been cited, but —

Mr. LICHTENFELS. The inspector who observed it apparently felt that way, sir.

Mr. MEADOWS. Okay, and that brings me to my closing thought. If we put all of the discretion in the hands of 350 inspectors, it depends on how bad of a morning they had. I can tell you, I would be wining and dining those guys, take them to dinner and making sure that they —

[Laughter.]

Mr. MEADOWS. But it really depends on if they have a bad hair day on whether they are going to cite something. And with this particular thing, what you are saying is that if we get a letter that says that that is in compliance, that that citation should be what?

Mr. LICHTENFELS. I would think we should have —

Mr. MEADOWS. I know what you think, but let me just ask you —

Mr. LICHTENFELS. If it was brought to my attention, I would see that it was vacated.

Mr. MEADOWS. All right. So any problems that we have here in western North Carolina, should we be bringing them to your attention?

Mr. LICHTENFELS. I would hope it doesn't need to be that way.

Mr. MEADOWS. We have heard multiple complaints today. Who do we go to? Because I will tell you, if I don't get this fixed, I don't have a job.

[Laughter.]

Mr. LICHTENFELS. The process is that we encourage all mine operators to do this, to discuss each situation with the inspector on the site, try to resolve it at that point.

Mr. MEADOWS. But that doesn't happen.

How many of you would agree that that happens on a regular basis, that the inspector on-site really tries to mitigate it and not write a citation? Does that happen?

[Chorus of noes.]

Mr. MEADOWS. So we have a problem maybe with the inspector just in my area, but I don't think so because we have gentlemen from other areas here as well.

I appreciate the Chair's indulgence. I will yield back.

Mr. MICA. Thank you.

I recognize Dr. Roe.

Mr. ROE. Thank you, Chairman.

I think the Chairman brought up something a minute ago, that what we have done in this country is we have taken a set of laws and we have thrown the common sense out the window.

Mr. Lichtenfels, I appreciate you being here. Let's take you off the job you have and put you back in the real world where all these people that you see here are trying to comply, trying to make a living, and trying to have a safe workplace. You saw Mr. McNeely. I read the statistics in his workplace, years without a violation. Would you feel safe putting that harness on and doing anything? I would. Would you feel safe in that?

Mr. LICHTENFELS. He says he got a letter from the manufacturer.

[Laughter.]

Mr. LICHTENFELS. I didn't see the situation. Yes, sir, I would.

Mr. ROE. Okay. Thank you. I would, too. I absolutely would. I would rappel off the fire tower on the Fourth of July. It is amazing what you will do for votes.

[Laughter.]

Mr. ROE. The belt that we saw was not unsafe, but what Mr. Meadows just got through saying is that businesses like ours, 30-something years, private businesses, cannot fight you people. We write the check, and then we have affirmed that we are not a safe workplace, so when you come back again, you find something and the fines go up. It is a Catch-22, and I think you have to put some common sense back in. You can sense my frustration, and I am putting you back in the private sector where you spent 20-something years. I know you did.

Mr. LICHTENFELS. Yes, sir.

Mr. ROE. And you would look at that and if you were working back where you were, you would be offended by this right here, and your frustration—you could try to run these businesses, and I applaud your effort at MSHA trying to make it safe for folks and clearly saying that a surface mine is safer than a deep mine, there is no question about that. We know what happened at the Big Branch Mine just a couple of years ago.

The fatalities you mentioned, obviously zero should be our goal in the workplace. The gentleman who had a heart attack in Mr. McNeely's shop, if he died on the spot, would that count as a fatality, a mine fatality?

Mr. LICHTENFELS. Most likely not, sir.

Mr. ROE. Okay. It would not, but it was a violation. He was removed, and that was considered an injury that day when he left. So at least fatalities are not medical things, if a diabetic had a problem or a medical —

Mr. LICHTENFELS. Right.

Mr. ROE. Okay, that helps me there. And how do you explain the safety record of MSHA versus the industry being higher? How do you look those folks in the eye and write them a citation?

Mr. LICHTENFELS. Well, that is a good question, and we are taking that seriously, and we meet on a monthly basis at headquarters to review the issue. A large portion of those claims are hearing loss, so it is difficult. The rest are just strains and sprains, and we are certainly dealing with it.

Mr. ROE. Okay. And how much of the money that you take in comes in fines? I think Mr. Meadows made a great point a minute ago about how like minds think, but I am thinking if you put a training video on the web, that is your video. Why in the world should they have to bring. It is yours. You created it, and if that is what you are supposed to follow, is it like the IRS, where if you follow my advice, you are still going to need? Because that is exactly what happens with the IRS, and that is one of the frustrations that the American people have. If they follow what they believe is the correct thing to do, shouldn't they be okay?

Mr. LICHTENFELS. Yes, sir.

Mr. ROE. Okay. So if they follow those videos that are on the—the PowerPoints that you have on the web, I am hearing you right out here for the record, that should just be wiped off, cleaned off the slate.

Mr. LICHTENFELS. We should certainly review that and discuss it. Yes, sir.

Mr. ROE. Why does it need review?

Mr. LICHTENFELS. Well, if we put a video out there, we should make sure that it is accurate. I agree.

Mr. ROE. I totally agree with that, but if they follow one you put out —

Mr. LICHTENFELS. Right.

Mr. ROE.—and the international standards of, let's say, a company like Caterpillar, which was mentioned today, following those fall standards that are out there, if they know right now that that is a violation, how in the world do you match those two?

Mr. LICHTENFELS. It is difficult. I understand that. I was in the industry for 43 years, and I do understand it. But the point is each situation has to be evaluated on a case-by-case basis.

Mr. ROE. But if you follow the rules, which these people are, you shouldn't have to be explaining to somebody why you follow the rules. It shouldn't even be an issue. Do you agree with that?

Mr. LICHTENFELS. Yes, sir.

Mr. ROE. Does any of the fine money that they pay in the millions, tens of millions of dollars, go back into the training we have talked about for compliance? Where does it go?

Mr. LICHTENFELS. The money goes to the Treasury.

Mr. ROE. Treasury?

Mr. LICHTENFELS. Yes, sir.

Mr. ROE. Okay. So that would be something we would have to do legislatively.

Mr. LICHTENFELS. Yes, sir.

Mr. ROE. That is something we could look at.

With that, I will yield back.

Mr. MICA. Thank you.  
Congressman Griffith?

Mr. GRIFFITH. Thank you, Mr. Chairman.

Let me congratulate you on being here today. I know somewhere in some room in Washington, you drew the short straw.

[Laughter.]

Mr. GRIFFITH. And I do appreciate that. And I want to congratulate you on recognizing that there have been some problems and that you all are working on consistency. Your testimony here today, I understand you are in a tight spot, that you are trying to defend the policies that you didn't necessarily make. But at the same time, it is hard for you to make blanket statements, "Yes, I will fix this," when you may not have that authority to fix this or that, and I appreciate that.

Understand, I am coming up with some tough questions here in a minute.

[Laughter.]

Mr. GRIFFITH. But I did want to get that out there because I think you have done a nice job with a difficult situation.

And I also want to say that I think one of the problems that I hear about all the time—it hasn't come up previously—which you are not an example of is that apparently there are a lot of inspectors being hired who have limited or no experience in the mining industry, and they are coming in after having either limited or no experience and becoming mine inspectors. And so I appreciate the fact that you do come from the industry, and I would just make that note that there are a lot of folks out there that are frustrated with somebody who might have six months in a mine, like some of the mine inspectors, and after they go through a training class they are out telling folks with experience like yours how to do the job that these folks have been doing very safely for a number of years. So I would just make that comment.

Now, these questions that I am going to ask you are not directed at you personally, but they are tough questions, and I think we need answers to them.

Do you know of or do you have any reason to believe that there is an official quota system with the MSHA fine and citation process?

Mr. LICHTENFELS. We have made it clear there is no quota system.

Mr. GRIFFITH. Is there any unofficial MSHA fine or citation system?

Mr. LICHTENFELS. Did you say an MSHA quota system again?

Mr. GRIFFITH. Yes, sir. I am asking you about unofficial.

Mr. LICHTENFELS. No unofficial.

Mr. GRIFFITH. Now, I am going to bore down into this a little bit further, because sometimes there can be no official or maybe not even a recognized unofficial system, but sometimes policies create a system even if the people who are creating those policies don't intend to. A large police department somewhere in Virginia once created a system that they didn't see as quotas at the time until a judge pointed it out to them that they had created a quota system. Here is what they were doing. If you wrote four tickets, you

got moved up the line to get the newest patrol car, and all the guys wanted the newest patrol car.

So I want you to think about it and think about your answer. Is there any system where the people who get those—I saw that chart with the big spike. Is there any system whereby if you are writing more citations, that you are getting promotions, I know it wouldn't be new squad cars but some kind of new equipment, a new car to drive, a newer car to drive? I mean, is there some kind of system that may not have intentionally been set up as a quota system but which could have the possibility of setting up a quota system because there are rewards to the inspectors for writing the citations?

Mr. LICHTENFELS. None that I am aware of, sir.

Mr. GRIFFITH. Can I ask you to go back and look and see if there are any systems whereby if you write more citations or you get more fine money in, one is that placed in your personnel jacket as to what your fines are and how many citations you write; and two, are there any side benefits to writing more citations that nobody really thought about? I am not accusing you of doing this intentionally, but they might have unintentionally created a bonus a reward system, in essence a quota system? Would you go back and check on that, and could you report back to the subcommittee on that?

Mr. LICHTENFELS. Yes, sir.

Mr. GRIFFITH. I would greatly appreciate that. Again, I did not mean that personally, but I have seen this happen sometimes unintentionally, because when you look at the Mine Safety Act, we can agree or disagree on whether or not you should write the citation. But when you see that chart, and I had not seen that chart before this point, it is pretty telling that from 1977 until whenever that spike was—let me see that chart again, that graph that you had. There you go. It looks like somewhere about 2005 to 2008, dealing with the same law, we had a major shift in policy.

So if it isn't that there is some kind of inadvertent bonus system, then there must have been a shift in the policies coming out of the administration of MSHA and something that MSHA may want to take a look at and that we may want to take a look at. But you would agree that that spike indicates that there must have been some kind of shift in policy.

Mr. LICHTENFELS. There was a change in Part 100 in the assessment standards.

Mr. GRIFFITH. And who was responsible for that? That was MSHA's interpretation?

Mr. LICHTENFELS. Yes, sir.

Mr. GRIFFITH. Of some regulations?

Mr. LICHTENFELS. Yes, sir.

Mr. GRIFFITH. And just for the record, I don't believe you were with the agency at that time; is that correct?

Mr. LICHTENFELS. I started in 2008.

Mr. GRIFFITH. Okay. So you didn't have anything to do with that, and I appreciate that.

Those are my concerns. I do appreciate the fact that you are after the consistency issue. I think it is more than just the guards. Anything that you can do in your position, having been in industry, to make these things make more sense so that people feel com-

fortable. Everybody wants us to have mine safety, everybody. We are all in agreement on that. And what the operators across the board are saying is give us some consistency, let us talk to you about the policy, which I think you have indicated that you are open to. Let us talk about the policies and make sure the policies make sense, and then let's have some consistent enforcement so that we are following the rules and we are following what we think is the speed limit sign that says 35, and we are driving at 35 and not being fined when we are driving at 35, and somebody tells us, well, it says 35, but we really meant 28. Can you do that for us and keep working on that?

Mr. LICHTENFELS. Yes, sir.

Mr. GRIFFITH. I appreciate that very much, and I appreciate this hearing, Mr. Chairman. I think it is extremely important that we had this. Congressman, thank you for bringing us to your district, and I yield back.

Mr. MICA. Thank you. I do want again to thank Congressman Meadows for bringing this to my attention and making it his priority for the subcommittee and our committee's power.

Again, these hearings are nice, but we do need to follow up, so we will have a number of follow-up items.

Is this the first time you have testified before a committee of Congress?

Mr. LICHTENFELS. Yes, sir.

Mr. MICA. Who is the administrator?

Mr. LICHTENFELS. Neal Merrifield.

Mr. MICA. I guess he regularly testifies?

Mr. LICHTENFELS. I don't know that he has either. Normally, it is the Assistant Secretary.

Mr. MICA. Well, we will also contact the committees of legislative authorization and jurisdiction. I will ask Mr. Meadows to kind of lead that effort. There are two ways we can tackle this. The thing that concerns everybody is that people feel they have lost discretion in the way these fines are applied, and then trying to get common sense back into play, but I imagine those fines also cover coal?

Mr. LICHTENFELS. Yes, I would guess.

Mr. MICA. Okay. If you could get us that information, we will put it in the record because I think it is important.

But I think follow-up is key to making a change in a law that is 35 years old that has been cited as part of the problem, and then trying to make certain that the folks are treated fairly, to have some due process, or just some process.

Again, the goal is safety for workers in the workplace. We would like to get fatalities to zero, if that is at all humanely possible. We have made some progress, but in the meantime, again, some over-regulation, over burden, we end up losing more and more jobs out of the United States and closing down industry and business and opportunity.

So with that being said, again, we appreciate your coming forward today. We will follow up.

Mr. Meadows, any closing comments?

Mr. MEADOWS. No, just to thank you for coming. It is never fun to come. You knew when you came you were going to have to face the medicine, and I appreciate your willingness to do that.

I look forward to working with you to solve this issue. I believe that it is solvable. I heard testimony that what we want are safe mines. I know Mr. McNeely, and the people that work for him are his family. Some are literally his family, but they are his family, and that is what this is across the board. I see some of these guys and their family members, and they don't want to operate in an unsafe environment.

So we have two goals. They want to have safe mines. Let's work together to make sure that we don't put people out of business.

With that, I just want to say thank you all, and I will yield back to the Chairman.

Mr. MICA. With that, I thank the witnesses. I thank those who came out today to join us. I am particularly grateful to the community of Bakersville, and also Mitchell County for the use of these historic facilities at this rather historic hearing.

There being no further business before the Subcommittee on Government Operations, this hearing is adjourned. Thank you.

[Whereupon, at 12:16 p.m., the committee was adjourned.]



## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD



Cherie K. Berry  
Commissioner

June 17, 2013

The Honorable Mark Meadows, Member  
Subcommittee on Government Operations  
U.S. House of Representatives  
1516 Longworth House Office Building  
Washington, D.C. 20515

Congressman Meadows,

I am pleased that the House Oversight and Government Reform Subcommittee on Government Operations will conduct a hearing on June 21 in North Carolina regarding the Mine Safety and Health Administration (MSHA). Through enforcement of the Mine Safety and Health Act, MSHA serves a valuable purpose in protecting the safety of our nation's miners. However, we are concerned that the current administration is placing a higher value on compliance activities rather than on education and training for mine operators and employees.

Over the past several years, MSHA has shifted resources toward enforcement and away from training. Unfortunately, training resources are being further decreased with the recent reduction in federal funding caused by sequestration. Safety training plays a critical role in preventing workplace injuries and fatalities by teaching operators and employees to recognize hazards and learn proper procedures. As recent fatality and accident investigation reports by MSHA indicate, many of these incidents occurred because of insufficient training and education.

MSHA's emphasis on compliance rather than education is reflected in the agency's recent proposal to completely eliminate the Assistance to States grant program. These grants are awarded to states in order to provide to mine operators the safety and health training required by the Mine Safety and Health Act. My department's Mine and Quarry Bureau is responsible for conducting this important training and depends upon this grant program to provide this assistance. If this grant is eliminated, our Bureau will be forced to reduce staff and significantly cut the amount of safety training that we currently offer. North Carolina's mining industry is experiencing its lowest injury and illness rates ever and this is directly attributable to a strong safety training program.

I strongly oppose MSHA's proposal and urge you to reject any attempt to reduce the amount of training that is available to workers in this industry. While compliance and enforcement activities are a necessary component of any regulatory agency, it is shortsighted to operate under the assumption that enforcement alone will reduce the number of workplace accidents.

Thank you for requesting and considering input from North Carolina, as well as the many other states affected by MSHA's regulatory agenda. William Gerring, my Mine and Quarry Bureau Chief, is attending Friday's hearing and will be available to address questions and offer comments. My Governmental Affairs staff is also available to provide additional information and may be reached at (919) 733-0365.

Respectfully,

A handwritten signature in cursive script that reads "Cherie".

Cherie K. Berry  
Commissioner

Statement for the Record  
House Oversight and Government Reform Committee Subcommittee on Government  
Operations Field Hearing in Bakersville, NC  
Rep. Virginia Foxx (NC-05)  
June 21, 2013

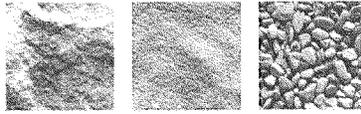
Thank you to Subcommittee Chairman John Mica and my North Carolina colleague, Representative Mark Meadows, for holding this hearing today on the importance of commonsense mine safety regulations. As a Member of Congress from northwestern North Carolina, I have long recognized the positive economic impact of particularly metal/non-metal mining in this region. While I do not have mining operations in my district, my constituents benefit from proximity to the source and supply chain of natural minerals.

Mining operations in North Carolina have a significant economic impact and mineral production in the state was valued at approximately \$1 billion in 2010. According to the National Mining Association, the industry provides direct employment to more than 10,000 people and supports an additional 27,510 jobs in North Carolina. The average annual wage in our state's mining industry is more than \$50,000 which provides a great livelihood for many North Carolinians. The federal government should carefully consider current regulation on job creators to ensure that each is necessary to protect workers and does not hamper economic opportunity and innovation.

That is why it is unfortunate that the federal Mine Safety and Health Administration (MSHA) has recently focused more on compliance by employers than ensuring safety for workers. As a member of the House Education and Workforce Committee which has primary jurisdiction of MSHA, I am especially concerned that this shift will unnecessarily burden job creators and not result in safer mining operations. Reports have surfaced that MSHA training resources are outdated which has led to the inconsistent application of regulations by MSHA officials and contradictions between equipment modification safety standards required by MSHA and internationally-accepted standards. The unpredictable application of standards in addition to MSHA shifting funds from education and information to enforcement has created an uncertain situation for employers and employees alike.

My hope is that today's hearing will shed light on the shift in MSHA's priorities and clarify the unclear application of safety standards. It is important to note that I am not anti-government, but as a former small business owner, believe firmly that government regulation must be sensible, smart and consistent. Thank you again for allowing me the opportunity to offer comments on the current state of affairs at MSHA at today's hearing. I look forward to reviewing the information that will be presented to understand better how we can improve safety standards for employees and employers in the best interest of all involved and in conjunction with growth in the mining sector.

NATIONAL STONE, SAND & GRAVEL ASSOCIATION



*Natural building blocks for quality of life*

**Statement for the Record  
of  
C. Howard Nye  
President & CEO  
Martin Marietta Materials  
Raleigh, North Carolina  
Chairman, Board of Directors, National Stone, Sand and Gravel  
Association**

**For the Field Hearing On**

**“Building a Better Partnership: Exploring MSHA Regulation of  
Southern Appalachian Mining.”  
Subcommittee on Government Operations  
House Committee on Oversight and Government Reform  
Mitchell County Courthouse  
Bakersville, N.C. 28705  
June 21, 2013**

Mr. Chairman:

The National Stone, Sand and Gravel Association (NSSGA) appreciates the opportunity to submit a statement for the record of this Operations subcommittee hearing and to address very briefly the critical issue of building a better partnership between mine operators and the U.S. Mine Safety and Health Administration (MSHA).

Based near the nation's capital, NSSGA is the world's largest mining association by product volume. Its member companies represent more than 90% of the crushed stone and 70% of the sand and gravel produced annually in the U.S. and approximately 110,500 working men and women in the aggregates industry. During 2012, a total of two billion metric tons of crushed stone, sand and gravel, valued at \$17.4 billion, were produced and sold in the United States.

For more than two decades, the aggregates industry has manifested a strong and unwavering commitment to the safety and health of every miner. In this effort, we were the first to establish with MSHA an Alliance for education and training. We have initiated a Safety and Health Pledge campaign by which operators, who bear the primary responsibility for workplace safety, commit to helping the industry reduce its injury rate. Also, we have sponsored over 20 programs, workshops, guides and other initiatives focused on safety for our member organizations. Through these and other efforts, our members have succeeded in reducing the injury rate in each of the last 12 years with a record low level in 2012 of just 2.17 injuries per 200,000 hours worked.

However, we are concerned that MSHA enforcement is too often focused on punitive measures that can under-cut the cause for safety and compliance, thus forcing finite resources to be taken away from efforts that have a discernible impact on safety.

We have long contended that a more consistent and constructive approach by MSHA would help us do even more to ensure that our workplaces are safe and healthful. Accordingly, we suggest that MSHA strive for improved enforcement consistency. Inspectors should be trained effectively and held to account for citations written.

Just one example of inconsistency that leads to squandered capital resources and labor – saying nothing of confusion for compliance officers on the ground – is the different ways in which MSHA enforced the berm standard (56.9300) beginning in 2010. We believe that millions of dollars were wasted as operators were led to believe they had to design and install guards on weigh scales for some alleged risk of a truck falling off of a weigh scale while proceeding at about three miles per hour. This led to the mispending of substantial operator resources with absolutely zero benefit to workplace safety. We believe the agency should be much more careful about changing interpretations of what is needed to comply with such standards and should enter into

dialogue with stakeholders beforehand to help assure that well-intended MSHA efforts are grounded in a practical awareness of operator impacts.

It is our opinion that the agency's enforcement focus should be on genuine risk to workers. Many citations are written with high degrees of gravity over conditions that, while arguably violative, are not serious threats to worker safety or health.

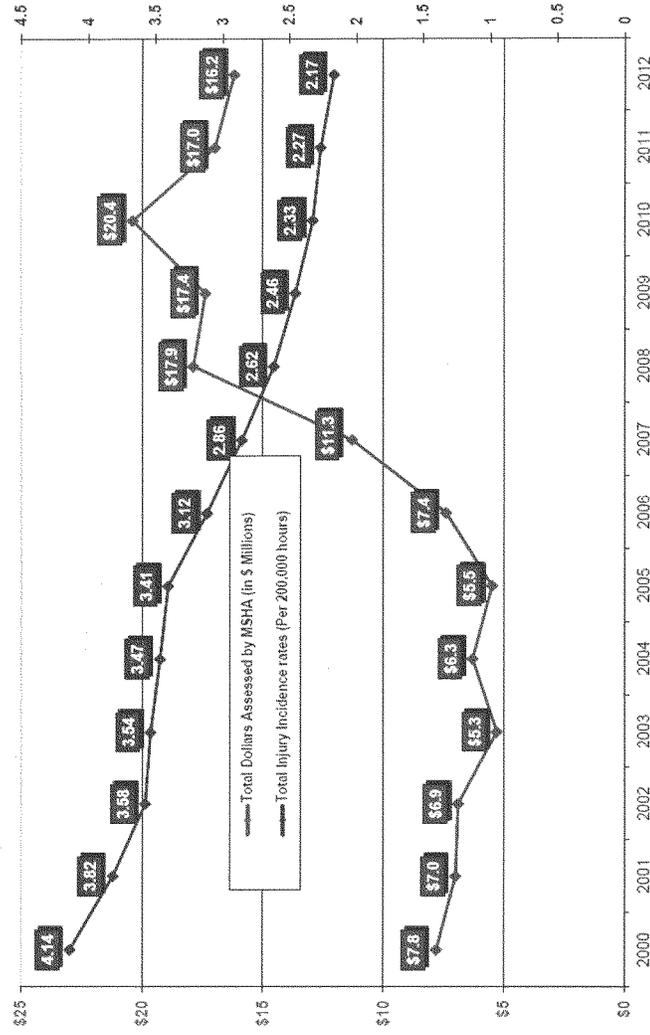
Further, we believe that at this time of severely limited resources at the disposal of both government regulators and stakeholders, MSHA's approach should include an effort toward rewarding good operators so that enforcement can be focused on those relatively few operators not yet fully committed to safety and compliance.

Additionally, the compliance assistance called for in the 1977 Federal Mine Safety and Health Act should be robust. While we applaud the commitment shown by Assistant Secretary for MSHA Joe Main and a number of the agency's senior officials to operator outreach, we are much more enthusiastic about the tangible benefits that continue to accrue from the agency's compliance assistance outreach to small mines, as performed by the Small Mines Consulting Program. This program has been instrumental in dramatic reductions in fatality rates, reductions that are more impressive than that of the industry at large. Also, the State Grants program, so critical to training for safety and health, should be funded at its fully authorized level.

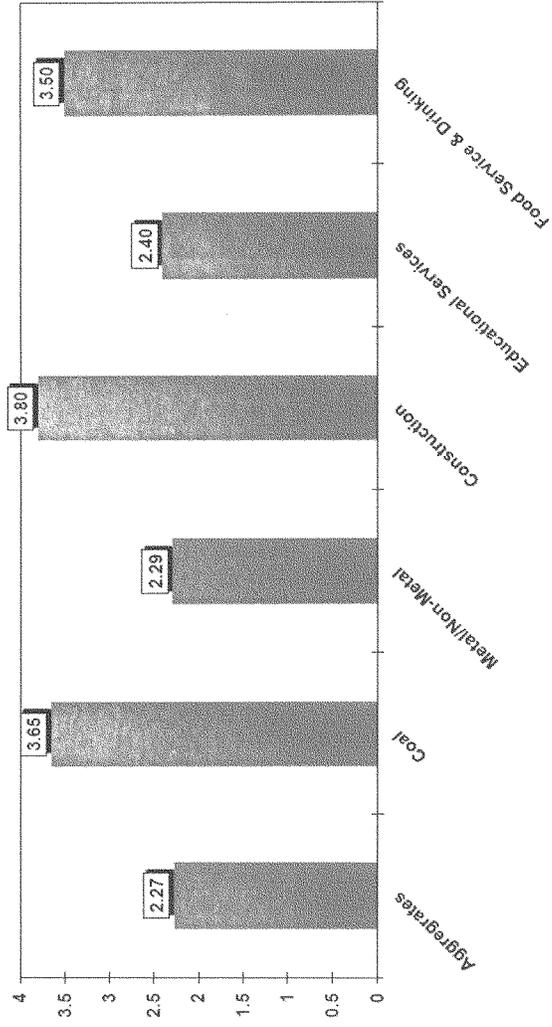
Thank you, again, for this opportunity to provide a statement for the record. Follow-up questions should be submitted to Pam Whitted, NSSGA's senior vice president of legislative and regulatory affairs, at (703) 526 -1083 / [pwhitted@nssga.org](mailto:pwhitted@nssga.org).

Attachments

US AGGREGATES OPERATIONS



Comparison of Industries  
2011, U.S. Department of Labor



Number of injuries, per 200,000 hours worked



**MSHA'S RESPONSE TO QUESTIONS FROM FIELD HEARING OF THE  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS OF THE HOUSE  
OVERSIGHT COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

1. The dollar amount for metal/nonmetal mining. We have data on citation amounts since 2000 for the aggregates industry but the Chairman wanted data for entire metal/nonmetal category from that date onwards.

The following table lists the proposed penalty amounts for all metal and nonmetal mines by calendar year:

Total Proposed Penalties by Issue CY

	MNM (\$ in millions)
2000	12.9
2001	CY
2002	8.3
2003	8.7
2004	9.3
2005	10.8
2006	12.9
2007	30.7
2008	31.9
2009	40.9
2010	52.7
2011	40.8
2012	39.5
2013*	15.7

\*Data through 6/25/13

A 2007 final rule, as well as the Mine Improvement and New Emergency Response Act (MINER Act) of 2006, increased penalties for violations.

2. **There was discussion about MSHA's participation in international mining safety conventions. Mr. Lichtenfels was not able to characterize MSHA's role. Could you please explain MSHA's role and participation in international mining discussions<sup>1</sup>?**

While MSHA is required to enforce its regulations, which may or may not be based on consensus standards, MSHA does use consensus standards, as appropriate, during the rulemaking process and in conducting other activities, including compliance assistance. This includes recommendations from international organizations. In one example of how consensus standards are used in compliance assistance, MSHA with input from equipment manufacturers produced a Program Information Bulletin (PIB) clarifying MSHA's policy on fall protection involving mobile equipment. This clarification, which was derived from consensus standards, can be found on MSHA's website at:

<http://www.msha.gov/regs/complian/PIB/2010/pib10-04.pdf>. In addition, as Mr. Lichtenfels testified at the hearing, in June, 2012, MSHA published a Program Policy Letter (PPL) clarifying that in many cases, operators will be in compliance with MSHA's fall protection standard if they comply with the OSHA standard. A copy of this letter can be found on MSHA's website at:  
<http://www.msha.gov/regs/complian/ppls/2012/PPL12-IV-01.asp>.

In FY2012, MSHA participated in the following voluntary consensus bodies: The American National Standards Institute (ANSI), the American Society of Mechanical Engineers (ASME), the American Society for Testing and Materials (ASTM), the American Welding Society (AWS), the Department of Homeland Security Government Coordinating Committee (GCC), FEMA, the Interagency Committee on Dam Safety (ICODS), the International Electrotechnical Commission (IEC), the International Society of Automation (ISA), the International Standardization Organization (ISO), the National Fire Protection Association (NFPA), the Society of Automotive Engineering (SAE), Underwriter's Laboratory (UL) and the U.S. National Committee of International Electrotechnical Commission (USNC/IEC). Twenty-one MSHA representatives participated in 54 voluntary consensus activities, including serving on technical committees that develop consensus standards.

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<sup>1</sup> At the hearing, Chairman Mica asked this question as part of a discussion regarding updating MSHA standards, and whether the Agency could use consensus and international standards to accomplish this goal.

3. Mr. Lichtenfels asserted that MSHA is revising Part 100 of the CFR and that the rule is currently at OMB. Is there a causal reason for the review of Part 100? How long has the rule been at OMB? When does MSHA believe the rule will be proposed?

MSHA's notice of proposed rulemaking on the criteria and procedures for assessing civil penalties is currently at OMB. OMB's review is required by EO 12866. The proposed rule was received by OMB on 12/2/2011. This rulemaking is on our current regulatory agenda. See [www.reginfo.gov](http://www.reginfo.gov)

The Federal Mine Safety and Health Act of 1977 provides criteria for developing proposed penalties. These criteria are: 1) the appropriateness of the penalty to the size of the business of the operator charged; 2) the operator's history of previous violations; 3) whether the operator was negligent; 4) the gravity of the violation; 5) the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation; and 6) the effect of the penalty on the operator's ability to continue in business. For regular assessments, MSHA's regulation under 30 CFR part 100 contains the agency's formula for determining proposed penalties.

4. Is there a system by which the number of citations issued by an inspector is tracked and categorized by MSHA? Are the number of citations issued by MSHA placed in a personnel jacket? Are the number of citations used as a metric to determine any aspect of benefits or bonuses for MSHA employees?

MSHA's enforcement goals are based solely on its mandate to carry out the provisions of the Mine Act. MSHA leadership has sent out a clear message to its employees that the agency does not have a quota requiring inspectors to issue a minimum number of citations and to remind them that historical enforcement data maintained by MSHA are not to be used to establish a minimum level of enforcement. The number of citations issued by MSHA is not placed in any employee's personnel jacket and is not used as a metric to determine any aspect of benefits or bonuses for MSHA employees.

It is important to note that mine safety is moving in the right direction. Compliance has improved, and from 2010 to 2012, there was an 18% drop in the number of citations and orders issued to mine operators.

**5. Has MSHA proposed to Congress to make any changes to the Mine Act?**

MSHA supports improvements to the Mine Act to give MSHA the tools it needs to address chronic violators that fail to take responsibility to operate safely and within the law. Assistant Secretary Joseph A. Main addressed the need for legislative reform when he testified in 2011 and 2012 before the House Education and the Workforce Committee and in 2011 before the Senate Health, Education and Labor Committee.

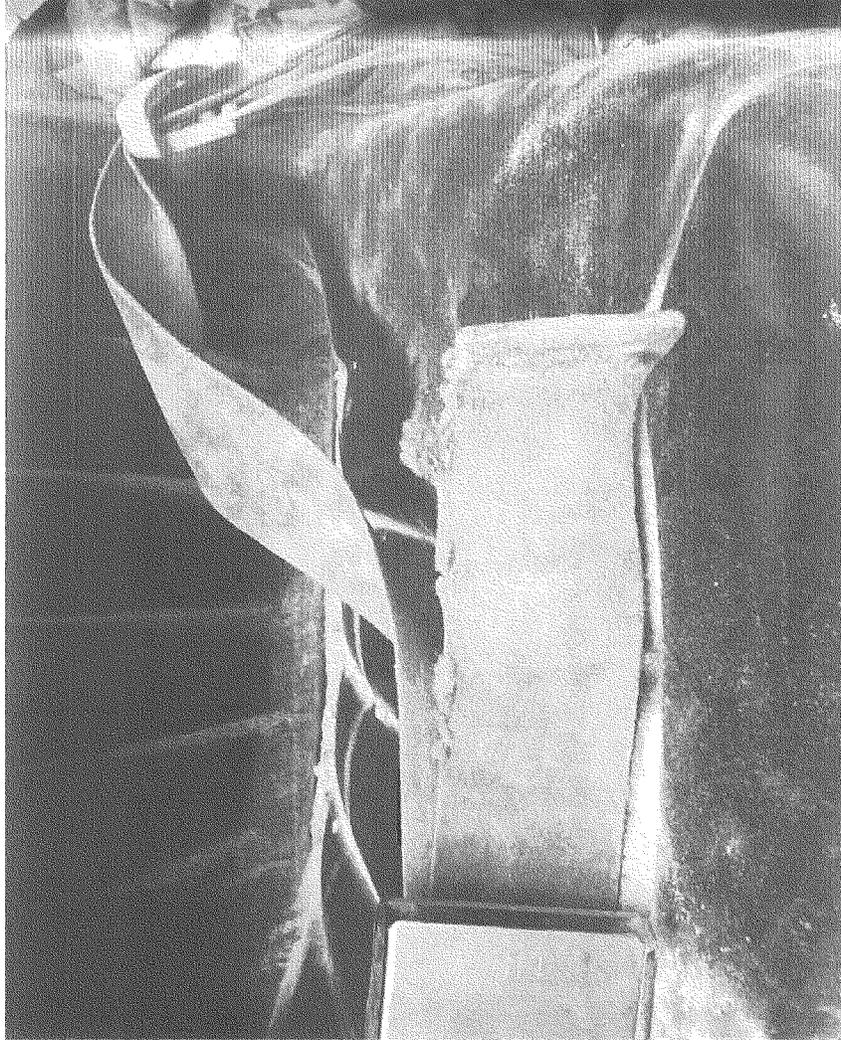
Chairman Mica also requested information about the nine fatalities that have occurred at metal and nonmetal mines in 2013. Specifically, he asked if the mines where the fatality occurred had received a citation for the same standard before the fatality that was also cited as contributing to the fatality. Of the nine fatalities, two are currently under investigation. Of the seven that have been completed, four mines were cited for similar standards in the previous five years.

Suggested MSHA reform from the Executive Committee of the North Carolina Aggregates Association.

The Committee agreed upon the following recommendations.

- #1 Revisit the Mine Act of 1977 and reform it to meet modern day standards or better yet turn regulatory oversight back to the States out of federal government hands.
- #2 Have the Government Accountability Office (GAO) audit MSHA procedures and policies
- #3 Establish a three member committee for contesting citations. The members should include MSHA, a Mining Industry Representative and an attorney that understands MSHA regulations.
- #4 Increase funding and emphasis on training. A collaborative effort with regulators would benefit all parties. They should be coming on site and educating our men on safety. The "gotcha" mentality benefits no one and should be a last resort.
- #5 There must be much more differentiation of surface aggregates from all coal mining and other underground mining. Our work environment is not near as hazardous, but every time there is a coal accident or disaster, the surface aggregates industry gets dragged into more fines, more citations and over zealous enforcement. We are not the problem.
- #6 Performance based inspection process. Focus on the operators that need the enforcement.

**Picture of Frayed Seat Belt**





**Letters and Emails from Caterpillar (and Dealer, Carolina Cat)  
Regarding Safe Access/Fall Protection**

**Mack McNeely**

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**From:** wjones@carolinacat.com  
**Sent:** Tuesday, March 23, 2010 10:19 PM  
**To:** Bill McNeely; Mack McNeely  
**Subject:** MSHA Warning  
**Attachments:** HEX Access.doc; 365 DSN Ticket.pdf; MSHA Letter.doc

Bill and Mack,

Following some research we have done on the MSHA warning you received, we have learned that this has been an issue at other quarries for some time now. Apparently Caterpillar is working with MSHA to find a "common ground" on this issue. I am attaching several documents from Caterpillar regarding their stance. They follow:

As for help, I received this from someone at Caterpillar:

"In regards to the recent MSHA citations and MSHA requests for customers to add guard rails to excavators, the excavator group is aware of a company, Pierce Pacific, offering a possible solution to MSHA's concerns. Please note that we do not agree that there are any valid safety concerns that would warrant the addition of guard rails on excavators in the field. Nor are we endorsing this product or company in any way. In addition, we use the term "possible solution" because MSHA has not provided clearly defined standards regarding adequate fall protection/safe access. We are hopeful that clearly defined standards will be identified in the near future; however, in the meantime, the option from Pierce Pacific may help address the customers' current issue."

**Contact:**  
Pierce Pacific  
503.808.9110  
4424 NE 158th Avenue  
Portland, Oregon 97230

I hope this is of some help to you guys. If I learn anything more, I will be sure to share it with you. Also, Adam Ackerman with Caterpillar would like to visit each of you in the next couple of weeks and follow up on your purchases of the 385B-L and the 773E last year. Call me if you want to discuss prior to our visit.

Woody

Woody Jones  
Forestry Manager/Territory Manager  
Carolina CAT  
40 Interstate Blvd.  
Asheville, NC 28806  
828-251-2500 ext. 3121 (office)  
828-231-8595 (cell)  
[wjones@carolinacat.com](mailto:wjones@carolinacat.com)

**CATERPILLAR**

Caterpillar Inc.  
100 NE Adams Street  
Peoria, Illinois 61629-7150

To Whom It May Concern:

May 15, 2007

Re: Hydraulic Excavator Access System

The Caterpillar Inc. hydraulic excavator access systems are designed to the technical requirements in ISO 2867 and SAE J185 Access Standards. These standards call for 3 points of contact when using steps, ladders and small maintenance platforms (230 – 300 mm wide) and 2 points of contact when using “stairways” and large maintenance platforms (greater than 300 mm wide). The primary access path to the cab requires 3 points of contact, while the right side maintenance access and center engine maintenance platform only require 2 points of contact.

The maintenance platforms on top of our excavators are below 3 meters above the ground. Both ISO 2867 and SAE J185 state that “guardrails” are only required if the maintenance platform is greater than 3 meters above the ground or another platform:

**ISO 2867**

**10.2 Platforms and walkways shall be provided with guardrails if the vertical distance from the open side of a platform or walkway surface is greater than 3 m above the ground or another platform.**

We do not have any field incidents that indicate the need for guardrails on our hydraulic excavators (which are less than 3 meters above the ground).

While the swing drive area on the right is open, we provide 2 points of contact while using the access stairway for access to the engine maintenance platform. We do not have a recorded field incident involving the open swing drive area.

We have an understanding with MSHA that our hydraulic excavators comply with the current requirements in ISO 2867 and SAE J185, for earthmoving machines access systems. Caterpillar Inc. is actively involved in the international industry group that is working on a future revision to ISO 2867. The revision of this standard will probably include a requirement for guardrails on the open side of a platform or walkway that is greater than 2 meters above the ground. Our hydraulic excavator design groups are actively working on this issue, as part of our normal product development / improvement process.

We do not have approved tie-off points on our current hydraulic excavators, as our hydraulic excavator access system designs meet or exceed the requirements in the ISO 2867 and SAE J185 Standards. Our hydraulic excavator design groups are reviewing the design requirements for approved tie-off points on future hydraulic excavator models, as part of the normal product development / improvement process.



Larry R. Loudermilk  
Hydraulic Excavator Product Consultant  
Regulations & Product Compliance  
Caterpillar Inc.  
Phone: 309-675-4589  
Mobile: 309-670-6995  
E-Mail: Loudermilk\_Larry\_R@cat.com

March 15, 2010

Gentlemen,

Pursuant to LBM Industries request, Caterpillar is providing the attached information regarding a handrail currently found on a Caterpillar 385B-L Hydraulic Excavator (HEX) that was designed consistent with the ISO 2867 and SAE J185 engineering standards for access systems on earthmoving equipment. Caterpillar understands that LBM Industries is considering using this information to construct and install additional handrails on a certain 385B-L HEX owned by LBM Industries in an effort to satisfy the requirements of a U.S. Mine Safety & Health Administration (MSHA) field inspector. Caterpillar further understands that the MSHA inspector provided no information to LBM Industries on how to construct handrails or where to install the additional handrails.

Importantly, Caterpillar's own field data reveals no basis for a safety-related change in the access system for the 385B-L HEX. Until Caterpillar receives information from MSHA indicating what safety issues, if any, have been identified with the access system of the Caterpillar designed 385B-L HEX and what revisions to the current ISO 2867:2006 engineering standard are necessary to address those safety issues, Caterpillar cannot take part in identifying any changes to the 385B-L access systems. Furthermore, in order to ensure safety, Caterpillar will not endorse implementation of any machine changes that have not undergone adequate engineering design and analysis, as well as testing and validation and will not accept any responsibility related to any handrails constructed, modified, or installed on a Caterpillar machine by LBM Industries or any other party, including but not limited to, warranty, product liability or personal injury.

Until very recently, Caterpillar understood that MSHA supported the use of the ISO 2867 engineering standard for designing adequate access systems for earthmoving equipment. As supported by the U.S. government, Caterpillar participates with other industry representatives and government authorities in engineering standards development committees in order to develop standards, including ISO 2867, that "can increase productivity and efficiency. . . , expand opportunities for international trade, conserve resources, improve health and safety and protect the environment." *U.S. Office of Management and Budget, Circular No. A-119* (February 10, 1998 Rev.). In support of our customers, Caterpillar will continue to work with other manufacturers through the Association of Equipment Manufacturers, and other trade organizations to communicate with MSHA about the many concerns raised by the agency's sudden change in position related to the use of engineering standards, including among other things, the inability of manufacturers and our customers to understand MSHA's new enforcement activities related to access systems on earthmoving equipment.

**Service Request Detail Report**

Monday, March 15, 2010

**Service Request Profile**

<b>SR Number:</b>	CAT-113796-PNV2	<b>Created:</b>	3/12/2010 9:16:53 AM
<b>Title:</b>	385B L / RCD / Handrails	<b>Submitted:</b>	3/12/2010 9:47:03 AM
<b>Event Type:</b>	DSN	<b>Opened:</b>	3/12/2010 9:55:37 AM
<b>Owner:</b>	Stonedpher, Ken	<b>Closed:</b>	
<b>Owner Phone #:</b>	3096368500	<b>Status:</b>	Pending Dealer Action
<b>Assignee:</b>	Provenzano, Roger W.		
<b>Assignee Phone #:</b>	+1 630 859 4419		

**Dealer/Contact Profile**

<b>Dealer Code:</b>	D090	<b>Preferred Email:</b>	mshue@carolinacat.com
<b>Dealer:</b>	CAROLINA TRACTOR & EQUIPMENT	<b>Non-DTC Contact Name:</b>	
<b>Contact:</b>	Shue, Mark W	<b>Carbon Copy Email 1:</b>	
<b>Preferred Phone #:</b>	+1 704 596 8880 ext 2268	<b>Carbon Copy Email 2:</b>	
<b>Alternate Phone #:</b>	980-722-8519	<b>Customer:</b>	
		<b>Customer Contact:</b>	

**Request Detail**

**Description:** This customer has gotten a warning from MSHA in regards to handrails around the top of their excavators. The handrail must be 42 inches in height. MSHA said "this is deemed a hazard when an employee climbs up on top of the excavator to check their engine oil level". I have listed other machines on the customers site that also are in question.

350 3ML00184  
322 9RL00719  
320 PAB01047  
320 7JK16826

My question is.

Do you have anything to offer this customer?

What is CATs stance on this issue?

Do you have a document that I can offer to the customer explaining CATs stance on this issue?

Please help.

**Dealer Suspected Root Cause:**

<b>Service Request Detail Report</b> Monday, March 15, 2010			
<b>Product Details</b>			
<u>Prime Product Information</u>		<u>Application Information</u>	
Serial Number:	RCD00235	Application Category Name:	BUILDING CONSTRUCTION
General Arrangement Number:	2293365	Application Category Code:	114
Model:	385B L	Application Name:	Building, Commercial And Public
Product Family:	Excavators-Large	Application Code:	250
Service Meter Reading:	5,000	<u>System Details</u>	
Service Meter Units:	Hours	Major System Code:	
Source Plant:	Cat S.A.R.L. Gosselies Invento	Major System:	
<u>OEM Details</u>		System Code:	
Name:	RCD00235	System:	
ID Number:	2293365	Subsystem Code:	
Product/Model:	385B L	Subsystem:	
Product Technology:	Excavators-Large		
<u>Part Details</u>			
Group Number:			
Part Count:			
No Data			
<u>Serialized Components</u>			
No Data			
<u>Resolution Details</u>			
Resolution Detail:			
Dealer Fix:			
<u>Source Type:</u>	<u>Source Name:</u>	<u>Source Detail:</u>	
<u>PIQ Details</u>			
Factory Contact:		Effective Date:	
Department:		Effective Serial Number:	

Service Request Detail Report			
Monday, March 15, 2010			
<b>Notes:</b>			
<b>Created Date:</b>	3/15/2010 5:10:51 AM		
<b>Dealer Contact Created By:</b>	Shue, Mark W		
<b>Caterpillar Created By:</b>	User, System		
<b>Note:</b>	Roger, from what I understand at this point MSHA is talking about being on the upper surface where you would need to be to open the hood to check engine fluid levels. MSHA said hand railing needed to be around the entire area to guard someone from falling off of the machine.		
<b>Created Date:</b>	3/12/2010 4:23:36 PM		
<b>Dealer Contact Created By:</b>	Provenzano, Roger W.		
<b>Note:</b>	<p>Mark,</p> <p>At this point, because MSHA has not clearly spelled out the requirements for the handrails, there are only few things that we can do. As a standard procedure for this issue, from legal department, I will send you an email with the details, and close the SR. The details from the SR will go to the legal department for review, and be added so they can review it in more detail. I will follow up with an email shortly.</p> <p>Best Regards, Roger Provenzano</p>		
<b>Created Date:</b>	3/12/2010 10:00:35 AM		
<b>Dealer Contact Created By:</b>	Stonedipher, Ken		
<b>Note:</b>	<p>RECOMMENDATIONS: Based on a previous service request, the Tier2 said Tier 2 response from previous AGS request: We do not offer handrails on top since we don't have any service points that need to be accessed from the rear or side of the machine. Most of our common service items are located from ground level, and if you need to open the hood at top, our hood opens from the front of the machine and you can access everything from front. I heard that our large mining machines, larger than 385's have platform there, therefore they do have handrails. Please let me know of any questions or comments you may have. See attached document. The Caterpillar Hydraulic Product Group takes very seriously the responsibility to build a safe product. We are guided by some very descriptive standards, as mentioned in the formal response, which we currently meet. The operative word, though, is "currently" as these standards are subject to change. Our mission is to continually look for ways to incorporate improved safety features for our equipment, and thereby become the example from which new standards are developed. Tier 2 confirmed the document is current.</p> <p>I will need to forward to Tier 2 for review and final recommendations.</p>		
	<p>REFERENCES SR Number: CAT-70577-TT5F    Created: 2009/08/17 12:36:55    Status: Closed</p> <p>Attachments: Yes</p> <p>Title: 345B / AGS / Platform Railing</p>		
<b>Attachments</b>			
<b>Name:</b>	<b>Type:</b>	<b>Size:</b>	<b>Date:</b>
HEXAccess[1]	doc	191490	3/12/2010 10:00:46 AM

**MSHA**

**Program Information Bulletin No. P10-04**

**Safe Access, Fall Prevention and Fall Protection involving Self Propelled Mobile  
Equipment**

[PDF Version](#)

U.S. Department of Labor

Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, Virginia 22209-3939

ISSUE DATE: June 16, 2010

PROGRAM INFORMATION BULLETIN NO. P10-04

FROM: NEAL H. MERRIFIELD   
Acting Administrator for  
Metal/Nonmetal Mine Safety and HealthSUBJECT: Safe Access, Fall Prevention and Fall Protection involving Self-Propelled Mobile  
Equipment**Scope**

This Program Information Bulletin (PIB) applies to Safety and Health Administration (MSHA) enforcement personnel, underground and surface mine operators, and independent contractors.

**Purpose**

This PIB provides information on providing safe means of access, fall prevention, and fall protection to miners operating, conducting maintenance or service activities, or accessing work platforms of self-propelled mobile equipment.

**Information**

Accessing, operating or maintaining self-propelled mobile equipment often requires activities such as climbing ladders, or walking on machinery surfaces which expose miners to hazard such as falls during all types of weather conditions. Modern mobile equipment is designed to minimize slip and fall hazards; but, large machinery, new and old, can require access at heights with a fall potential that can cause serious injury. The following precautions can reduce slip and fall accidents from mobile equipment.

- Equipment should be inspected for icy, wet, or oily areas at the start of each shift and whenever conditions dictate. Before climbing on, off or around mobile equipment, footwear should be free of mud or other substances that could cause slipping.

6/17/13

MSHA - PIB P10-04 - Safe Access, Fall Prevention and Fall Protection involving Self-Propelled Mobile Equipment

- Persons climbing on or off mobile equipment should face the machine. Both hands should be free for gripping the ladder, handrail, or handhold. When necessary, a cord, rope, or other line should be used to lift and lower lunch pails, thermos bottles, or tools.
  
- Walkways should be no narrower than their original manufactured widths, constructed with slip-resistant surfaces, and securely attached. Unobstructed access should be provided to all areas of the machine where a person might travel.
  
- Handholds or handrails should be within easy reach at critical locations.

In addition, equipment manufacturers may be providing safe access, fall prevention and fall protection by complying with ISO 2867, "Earthmoving Machinery - Access Systems" or SAE J185, "Recommended Practice for Access Systems for Off-Road Machines." Any modifications to mobile equipment should generally not be made without an engineering evaluation and concurrence by the manufacturer of the equipment. Unsafe access and fall hazards from mobile equipment can be reduced by the use of:

- portable ladders and work platforms,
- safety belts or harnesses and lanyards utilizing suitable anchor points,
- man-lifts,
- mobile work stations,
- docking stations, and
- relocating service points to safe areas, e.g., installing extended grease lines.

Operators are responsible for providing documentation to verify that their equipment is ISO 2867 certified. Inspectors may use the certification documents in considering if safe access, fall prevention and fall protection is being provided.

**What is the background of this bulletin?**

Equipment manufacturers have asked for clarification of MSHA's requirements for fall protection on mobile equipment.

**What is the authority for this bulletin?**

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 et. seq.; and 30 C.F.R. §§ 56/57.11001; 30 C.F.R. §§ 56/57.11002; 30 C.F.R. §§ 56/57.11027; 30 C.F.R. §§ 56/57.15005

**Who are the MSHA contact persons for this program information bulletin?**

Metal and Nonmetal Mine Safety and Health  
 Safety and Health Division  
 Lawrence J. Trainor Jr. P.E., (202) 693-9644  
 E-mail: trainor.lawrence@dol.gov

**Is this program information bulletin available on the Internet?**

This bulletin may be viewed on the World Wide Web by accessing the MSHA home page (<http://www.msha.gov>) and choosing "Compliance Info" and "Program Information Bulletins."

Who will receive the program information bulletin?

- MSHA Program Policy Holders
- Underground and Surface Mine Operators
- Underground and Surface Independent Contractors
- Special Interest Groups
- Miners' Representatives

