

Statement of Marvin Lichtenfels
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Mine Safety and Health Administration
Department of Labor
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Committee on Oversight and Government Reform
United States House of Representatives
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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 35th 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.

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MSHA Metal and Nonmetal

Mr. Lichtenfels is the Deputy Administrator for the Metal and Nonmetal program area at the Mine Safety and Health Administration (MSHA). He is responsible for the enforcement of the safety and health provisions of the Federal Mine Safety and Health Act of 1977, staff direction and development and implementation of metal and nonmetal mine safety and health policies nationwide. Prior to his appointment to the Deputy Administrator position in 2011, Mr. Lichtenfels was for two years, the Chief of Safety for the Metal and Nonmetal Safety and Health Division. Prior to his tenure at MSHA, he was an independent safety and health consultant for 13 years and worked in the mining industry in Pennsylvania for 23 years.

Mr. Lichtenfels is a Certified Safety Professional (CSP) and an Associate in Risk Management (ARM). He received his Bachelor's Degree from Geneva College in Beaver Falls, PA