STATEMENT OF

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BEFORE THE

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Mr. Chairman, Mr. Ranking Member, and Members of the Committee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) to discuss a matter of serious concern – the growing backlog of contested citations for violations of health and safety standards awaiting resolution by the Federal Mine Safety and Health Review Commission (Commission). Upon my confirmation in October of last year, I knew that I was facing a significant and growing backlog. Since my first day on the job, I have been examining the causes of the existing backlog and, in conjunction with the Office of the Solicitor of Labor, exploring solutions.

When Congress passed the Federal Mine Safety and Health Act of 1977 (Mine Act), it declared that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource – the miner." The Mine Act recognized that mining in all its forms presents unique hazards for miners. The Act establishes health and safety standards for all mine operators to follow. It also mandates active oversight by MSHA through regular mine inspections. The Mine Act requires

MSHA to inspect underground mines four times per year and surface mines two times per year. Congress also included in the Mine Act strong enforcement tools to ensure compliance with the safety and health standards mandated by the statute and the standards and regulations promulgated under it. At the same time, the law gives mine operators the right to contest MSHA's use of those strong enforcement tools, including proposed civil penalties.

For the Mine Act to be effectively implemented the way Congress intended, contested penalty cases must be resolved in a timely way. Even though the case backlog has not affected MSHA's ability to require operators to abate hazardous conditions, it has severely reduced the deterrent value that penalties were meant to have.

CURRENT BACKLOG

To understand the backlog, it is important to look at how it has developed. From 2005 to 2009, the number of violations and penalties certainly rose, but the percentage of cases contested by the mining industry and the percentage of total penalties reflected in those contested cases rose even faster:

- In CY 2005, MSHA cited 128,000 violations and proposed $24.9 million in penalties. That year, mine operators contested 6% of the violations, accounting for 29% of the proposed penalties proposed.
- In CY 2006, MSHA cited 140,000 violations and proposed $35.1 million in penalties. That year operators contested 7% of violations representing 35% of the proposed penalties.
- In CY 2007, MSHA cited 145,000 violations and proposed $74.5 million penalties. Operators contested 15% of violations that year, which represented 54% of the penalties proposed.
- In CY 2008, 174,000 violations were cited and MSHA proposed $194.2 million in penalties. That year 24% of violations were contested by mine operators representing 69% of penalties proposed.

- In CY 2009 MSHA cited 175,000 violations and proposed $141.2 million in penalties. Mine operators contested 27% of violations representing 66% of proposed penalties.[1]

As the number of contested citations grew, MSHA and the Commission worked to increase the number of contested citations that became final, but did not keep pace with the growing number of citations that were contested:

- In 2005, 7,200 citations were contested and 7,182 citations became final.
- In 2006, 10,036 citations were contested and 6,071 citations became final.
- In 2007, 19,546 citations were contested and 7,574 citations became final.
- In 2008, 46,792 citations were contested and 13,456 citations became final.
- In 2009, 46,526 citations were contested and 20,393 citations became final.

As these numbers demonstrate, the number of cases that are contested has significantly outpaced the rate at which cases are being resolved. One factor in this increase is clearly an increase in the number of citations MSHA has issued and the amount of penalties proposed. With the passage of the MINER Act and MSHA's commitment to conduct all statutorily mandated inspections, there has been about a 30% increase in the number of citations issued. Strikingly, while the increase in citations rose 30%, the dollar value of associated penalties proposed in those years increased almost five-fold, from $35 million in 2006 to an average of $167.5 million per year in 2008 and 2009.

The backlog cannot be explained solely by the increase in the number of violations MSHA has cited. The increase in the percentage of contested citations has grown much faster than the rate of increase in citations. The percentage of citations that operators contested rose dramatically, from 7.4% in 2006, or about 10,000 citations, to an average

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[1] There is a time lag between the time a citation is issued and the time a penalty is proposed. If one adjusts for that lag time, violations cited in CY 2005 represented $28.1 million in penalties, CY 2006 citations represented $42.8 million in penalties, CY 2007 citations represented $129.4 million in penalties, CY 2008 citations represented $143.2 million in penalties, and CY 2009 citations represent $129.8 million in penalties.

of just over 25% per year in 2008 and 2009, more than 46,000 contested citations each year.

The system's inability to keep pace with the rate of contested cases has caused a backlog of some 82,000 violations and $210 million in contested penalties pending before the Commission.[2] The backlog includes cases where MSHA and the operator have submitted a proposed settlement but are awaiting Commission approval, cases yet to be assigned a hearing date, cases scheduled for hearing or at hearing before an Administrative Law Judge (ALJ), and cases before the Commission on review. While most mine operators do not file notices of contest, a few operators are contesting a large percentage of their violations and proposed penalties, with some operators contesting up to 100% of the citations and proposed penalties they receive.

This increase in the number of contested citations has greatly increased the time it takes for a contested case to make its way through the process. For example, contested cases that became final in CY 2006 took an average of 374 days from the time the citation was issued until the time the case was resolved. In CY 2009, it took 587 days.

To successfully tackle the backlog, we must not only understand how it has developed over the past few years, it is also important to understand why it has developed. An examination of recent history provides the answers. As this Committee knows, tragedies struck the mining industry in 2006, starting with the mine explosion and disaster at the Sago Mine in West Virginia on January 2, 2006, where twelve miners lost their lives. It was followed by a deadly fire on January 19, 2006 at the Alma #1 mine in

[2] MSHA tracks contested matters before the Commission by citations. For each violation cited by a mine inspector an operator receives a citation. Multiple citations against a mine operator can be docketed in a single case, also called a "docket." While the Commission typically describes the contested case backlog and MSHA the contested violation backlog, they are the same disputed matters. MSHA does not dispute the Commission's 16,000 figure.

West Virginia that claimed two lives. A few months later on May 20, 2006 a disastrous explosion occurred at the Darby Mine in Eastern Kentucky, claiming the lives of five more miners.

In response, Congress enacted new legislation to improve mine safety and health. That legislation, the MINER Act, established a number of new safety requirements, including the use of enhanced mine communications and tracking technology, establishment of refuge areas, greater training of mine rescue teams, and other actions. Most relevant to our discussion today, the legislation also added minimum penalties of $2,000 for unwarrantable failure citations or orders issued under section 104(d)(1) and $4,000 for subsequent orders issued under 104(d)(2) of the Mine Act. It established penalties of up to $220,000 for newly created "flagrant" violations -- those involving "a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury." The MINER Act also established penalties between $5,000 and $60,000 for a mine operator who fails to notify MSHA in a timely manner of a death or an injury or entrapment with a reasonable potential for causing death.

MSHA also exercised its regulatory authority to increase penalties for violations of other health and safety standards. Following the tragedies at Sago, Alma and Darby, MSHA's penalty structure came under increased scrutiny. The Agency received criticism that its penalty assessments were insufficient as a deterrent for mine operators to prevent safety and health hazards. In March of 2007, MSHA completed rulemaking to revise its penalty assessment tables. These regulatory changes increased penalty amounts for most

violations, and increased penalties substantially for serious hazards and for repeat violators.

Also in the wake of the Sago and Alma tragedies, Congress directed MSHA to enhance its inspection program. Congress increased MSHA funding for the specific purpose of ensuring the full compliance with the Mine Act's requirement that all mines receive regular annual inspections – four complete inspections per year for all underground mines and two complete inspections per year for surface mines. Congress took this action because MSHA was not achieving these mandated responsibilities.

MSHA used the funding to increase the number of mine inspectors. The result was both an increase in the number of inspections – up to mandated levels – and in the quality of those inspections. As a result, the number of inspections rose from 21,705 in CY 2007 to 23,882 in 2008, a 10% increase, and 21,999 in CY 2009, a 1% increase from CY 2007 levels. With the increase in inspections, the number of cited violations increased as well, up 20% in CY 2008 and CY 2009 from CY 2007 levels.

The increased funding was used to recruit additional mine inspectors, and pay overtime necessary to meet the 100% inspection mandate. It is important to note that during this period of 100% enforcement in 2008 and 2009, the mining industry achieved record improvements in mine safety. In 2008, mining deaths reached an all-time low of 52. That record was again broken in 2009.

Preliminary reports show that in 2009 a record low of 35 miners died as a result of mine accidents. The year 2009 also marked an important record in coal mining. The number of deaths in underground coal mines fell to a record low of 7 – half the number of any previous year on record. For the first time, the number of mining deaths at

underground coal mines was much lower than at surface coal mines. Just as historic is the fact that the underground coal mining industry experienced a period of 8 months – from October 2008 through June of 2009 – in which no underground coal miner was killed in a mining accident.

Similarly, in metal and non-metal mining, the number of deaths at aggregates mines -- stone, sand, gravel and limestone – fell to a record low of 8 in 2009. Given that the majority of mining deaths in the metal and nonmetal mining sectors have occurred in recent years at aggregates facilities, this reduction is also a remarkable achievement.

MEASURES MOVING FORWARD

As we consider solutions to the backlog, we must be mindful of these improvements and MSHA's increased enforcement presence over the past few years when the industry achieved these safety records. However, while these safety records represent great strides forward in mine safety, we cannot lose sight of the fact that we continue to strive to prevent all miner deaths. Nor can we forget the grief and suffering of the families, friends and coworkers of the miners who died.

It is in the best interest of all affected – miners, mine operators, MSHA, the Solicitor of Labor, and the Federal Mine Safety and Health Review Commission – to effectively reduce the current backlog of cases and implement measures that will improve the process for contesting cases going forward.

Toward that end, MSHA and the Office of the Solicitor of Labor, which represents MSHA before the Commission, have given serious consideration to the backlog's causes and potential remedies. As a result, we have identified a number of structural changes

that could help improve the contested case process. The goal of the changes under consideration must be both to reduce the current backlog and to reduce the rate of contested cases in order to prevent future backlogs.

The changes that we implement to address these goals will be guided by several principles: (1) improved implementation of the Mine Act and mine health and safety, (2) simplification of the contested case process, (3) improved consistency by MSHA inspectors and supervisors, and (4) creation of an environment where fewer cases enter the contest process.

The following is a review of the issues contributing to the backlog and solutions under consideration:

Industry Responsibility for Mine Safety

The Mine Act obligates MSHA inspectors to cite violations observed. A review of the disposition of violations cited to mine operators indicates that a relatively minimal number of citations and orders are found completely without merit and vacated by either MSHA or the Commission. The percentages of assessed citations and orders vacated or withdrawn was 0.4% in 2006, 0.5% in 2007, 0.5% in 2008 and 0.5% in 2009. In most of the contested cases before the Commission, the issue is not whether a violation of a mandatory health or safety standard occurred. Instead the dispute is over the gravity of the violation and the operator's negligence.

Given that fact, the starting point for any analysis of the backlog is the obligation of mine operators to eliminate the conditions that lead to so many violations. With so many citations and orders issued, it is imperative that mine operators improve compliance. To do that, the mining industry must expand its health and safety management programs and

more thoroughly and regularly identify problem areas, inspect mines and abate hazards in advance of MSHA inspections. If MSHA inspectors can inspect workplaces and find these conditions, mine management should be finding them as well. If mine operators would take greater ownership of mine safety and health, it would be beneficial for all involved. Workers will be safer, the number of violations will be reduced, and penalties will go down. Instead of paying fines to the government, companies can invest that money back into ensuring the optimum health and safety at their mining operations.

With much lower fines in the past, some mine operators may have considered MSHA fines to be a cost of doing business, and abdicated their obligation to identify and correct hazards at their mines and ensure a healthy and safe workplace prior to inspections by MSHA. The responsibility for identifying and remedying mine hazards needs to be shifted from MSHA inspectors back to the mine operators.

To encourage mine operators to take more responsibility for the safety and health of their workers, MSHA will evaluate ways to improve the use of effective mine safety and health management programs by mine operators, particularly those that may be subject to the application of the pattern of violations criteria pursuant to section 104(e) of the Mine Act. I firmly believe the best way to resolve the backlog problem is to take measures to ensure safer and healthier mines that, under rigorous and complete inspections, receive fewer citations and orders from MSHA because there are fewer violations to cite. This will require a collaborative approach with the mining industry.

MSHA will also work with the mining industry to develop training programs and materials to aid compliance by mine operators. Some of those are underway. For example, I am working with the National Stone, Sand and Gravel Association to expand

such an initiative. My goal as Assistant Secretary is to change the paradigm in the mining industry so that mine operators are more proactively preventing hazards in their workplaces and fixing conditions that would be cited before a mine inspector even enters the property.

Simplification of Citations

In most of the contested cases before the Commission, the issue is not whether a violation occurred. Instead the dispute is over the gravity of the violation, the degree of mine operator negligence, and other factors. Currently, when writing a citation, a mine inspector determines the likelihood of injury from the violation, the severity of an injury if one occurred, and the number of persons affected by the hazardous condition, and decides whether the violation is significant and substantial. In addition, the inspector determines the operator's degree of negligence. These determinations are then used under the regulations to propose penalties based on statutory criteria. We are considering how to make the evaluation and writing of citations by inspectors simpler and ultimately more objective, clear and consistent. Any simplification would consider the effect on the number of issues that mine operators most often contest.

Mine Operator Conference Requests with MSHA

Under MSHA regulations a mine operator may request a safety and health conference for any citation, although MSHA may exercise discretion whether it grants such requests. Historically, MSHA has held safety and health conferences when requested by the mine operator to discuss and resolve disputes over violations. MSHA generally grants these

requests and determines the nature of the conference. MSHA considers all relevant information presented with respect to each citation that is conferenced. Conferences generally consist of a discussion of the specific findings by the inspector regarding the seriousness of the violation, including the degree of negligence, likelihood of occurrence, severity of injury or illness if injury occurred, and the number of miners potentially affected by the cited hazard. For each of these issues there are categories that have points assigned for each category. For example there are five degrees of negligence ranging from no negligence to reckless disregard, with progressively higher points assigned to higher degrees of negligence. Those points are used in a formula to propose a civil penalty amount for the violation. Until February 2008, MSHA held these conferences prior to the assessment of the civil penalty.[3] Once the MSHA health and safety conferences were concluded, MSHA's Office of Assessments would assign a penalty, taking into consideration any revisions MSHA enforcement personnel made to the evaluation of the violation. This conferencing process resulted in the mine operator filing no penalty contest if they were satisfied with the results of the conference.

Disputes resolved during health and safety conferences do not require approval by the Commission. In addition, uncontested citations and orders automatically become final orders of the Commission. Some mine operators, however, filed contests even after participating in an MSHA conference. Possible reasons for this behavior include disagreement with MSHA's position at the conference, or a desire to further reduce the seriousness of the violation to lower its impact on the operator's violation history, which can both increase future fines and cause MSHA to target the operator for scrutiny as an

[3] In February 2008 MSHA suspended most health and safety conferences, effectively deferring discussions until after the proposed penalty. In March 2009 MSHA formally created an "Enhanced Health and Safety Conference" that deferred all conference requests until after a penalty was proposed .

operator with a potential “pattern of violations.” Another possible reason is that, with changes in penalties, operators still wished to contest penalties after discovering the dollar amount of the proposed assessment.

In March 2009 MSHA implemented the Enhanced Safety and Health Conference, which was designed to reinstate early conferences to settle cases but still delayed conferencing until after a civil penalty was proposed and formally contested by the mine operator. This significantly added to the Commission’s caseload because proposed penalties that are formally contested, even if settled, must proceed through the Commission process and be reviewed and approved by an ALJ.

After a review of the conferencing process it appears that the best approach is to hold the MSHA health and safety conference, if requested by the mine operator, prior to MSHA issuing a proposed penalty assessment, and provide the mine operator with an estimated penalty amount based on the standard assessment formula. The MSHA field conferencing and litigation representatives (CLRs) and potentially other personnel would review the facts of the violation and the inspector’s determination of negligence, likeliness of occurrence, etc., as before. The resolution of these cases does not require Commission approval unless they are later contested. MSHA will implement this change through policy.

In addition to these changes, opportunities exist in the current system for operator and miner communication with MSHA to resolve disputes over citations. MSHA holds a “closeout” inspection meeting at the completion of each mine inspection to discuss the cited violations with the operator and any miners’ representatives. This provides the mine

operator and miners' representatives an opportunity to discuss the violations directly with the MSHA inspector.

Additionally, mine management and miners' representatives are permitted - and encouraged - to travel on the inspections at the mine. MSHA is examining how to maximize the use of these processes as a tool to resolve factual disputes about citations that later arise in the litigation process.

Review of the Pattern-of-Violations Process

We are also reviewing the current pattern of violation criteria contained in 30 C.F.R. Part 104. The criteria used for determining that an operator has a potential pattern of violations include a mine's history of significant and substantial (S&S) violations of a particular standard, history of S&S violations related to a particular hazard, and history of S&S violations caused by an unwarrantable failure to comply with health and safety standards. Once a potential pattern is found, an operator has a notice period to reduce the number of S&S violations at its mine. If the operator fails to reduce the number of violations, under Section 104(e) of the Mine Act, MSHA is required to first issue a notice that a pattern exists, and then require the withdrawal of all miners from any area of the mine where a significant and substantial violation has been cited.

Currently, when applying the criteria for finding a potential pattern of violations, MSHA only considers violations that have become final orders of the Commission. Citations and orders that are under contest, no matter how egregious, are not considered when enforcing the pattern of violation section of the Mine Act. We believe some operators contesting S&S violations may be doing so because it delays the finding of a

pattern, adding to the backlog and delaying MSHA from using this enhanced enforcement tool at their mines. As a result, there are operations that might be on a potential pattern of violations, but the backlog has prevented their cases from becoming final orders.

It is important that we remove the incentive for operators with repeated S&S safety violations at their mine to contest violations simply to delay enforcement. Delay in addressing S&S hazardous conditions puts miners at risk, is at odds with the purpose of the Mine Act and mission of MSHA, and is unacceptable. MSHA is considering a review of the pattern of violation process to determine whether our current approach is the best one for providing timely protection for miners working at mines with high levels of S&S violations.

MSHA will also consider whether the implementation and use of health and safety management programs for operators with these kinds of serious violations might also play a role in improving the pattern of violations process. Mine operators with a pattern of violations obviously do not maintain effective mine safety and health management programs; otherwise they would not have accumulated the violations that result in their placement on a potential pattern of violations. MSHA will study the use of such programs and their potential to both reduce the number of violations entering the system and improve mine safety and health.

Even without any changes to the pattern of violation criteria, we believe that under the current system we can take action to reduce the incentive for operators with S&S violations to file contests simply to delay fixing a systematic pattern of serious safety and health hazards. MSHA is announcing today its intention to review pending cases of those

operators with significant numbers of S&S citations, and where warranted, seek to expedite those cases so that the pattern of violations enforcement scheme of the Mine Act is given its intended effect and miners are not left at continued risk from delays caused by the backlog.

While this backlog will not be fixed overnight, we will take these steps to make sure operators that should be under scrutiny for having a potential pattern of serious health and safety violations get that scrutiny. We also believe that this strategy will remove the incentive of operators who may choose to contest cases simply for the purpose of delaying a pattern of violations finding.

Consistency

Some operators complain MSHA has not been consistent in its application of enforcement decisions involving health and safety standards, and that enforcement of the standards and evaluation of cited conditions varies from inspector to inspector. Consistency of enforcement is critical and requires constant training and review. Consistency in the application of the laws, rules and regulations enforced and administered by MSHA is an issue I have been studying closely. MSHA's workforce has changed significantly over the past few years. A substantial number of highly experienced mine inspectors have retired and been replaced by new inspectors. For example, about 55% of the current coal mine inspectors have been hired since July 2006. In Metal and Nonmetal, about 37% of inspectors were hired during that same period. Although new hires go through extensive training of up to two years and apprentice with a journeyman inspector before they can begin unsupervised inspection duties, even the

most experienced of these new inspectors have only been conducting federal mine inspections for a couple of years.

The significant turnover in MSHA's inspectorate coincided with the significant changes in the law brought about by the 2006 enactment of the MINER Act. The MINER Act required MSHA's inspectors to quickly get up to speed on new standards regarding mine communications and tracking devices, emergency response plans, sealing abandoned areas in underground coal mines, use of belt air to ventilate coal mines, and mine rescue teams and emergency refuge chambers and alternatives. As I mentioned earlier, MSHA also revised its penalty tables in this period, substantially increasing fines. These changes can create a potential for inconsistent application of the Mine Act – and we are evaluating how to maintain and improve our consistency where necessary.

Consistency requires ongoing training and review. To help with consistency, MSHA is developing training programs for its supervisors with the goal that inspectors will be held accountable for writing citations based on solid facts and evidence, and based on sustainable legal determinations. We want to ensure that inspectors are issuing citations for workplace hazards that can be supported before the Commission. To that end, we are collaborating with the Office of the Solicitor in developing these training programs and course material. We want to ensure that inspectors are writing "good paper," and are not issuing citations for conditions where there is no violation or where there is a lack of evidence to support the inspector's findings.

Consistency also requires training of Conference Litigation Representatives (CLRs), the MSHA personnel who handle most of the contested cases in the litigation process. It

is vital that CLRs evaluate citations under the same training and criteria as the inspectors who write the citations.

Finally, we must also provide appropriate training and guidelines to all MSHA field supervisors, including District Managers and Assistant District Managers, who have significant oversight responsibility for MSHA's enforcement program. Once trained for consistency, we must ensure that MSHA personnel are also managed for consistency.

With consistent training of inspectors and CLRs, and supervisory responsibility established in this effort as well, we hope to ensure inspectors write meritorious citations and develop an evidentiary record to support their prosecution. This improved consistency will give MSHA and the Office of the Solicitor stronger cases to litigate, which over time should help reduce the number of contested cases.

Fewer Cases in the System

Any system of reforms will have to result in fewer cases entering the contest system. MSHA does not believe that litigating our way out of this backlog is the best long-term solution. Instead, an approach that includes incentives to reduce the number of contested cases while reducing the exposure of miners to safety and health hazards is the best solution, and the solution that best implements the Mine Act.

Among the most important reforms, MSHA is considering how we might implement operator or corporate-wide holistic settlements to reduce the backlog. A review of cases currently pending before the Commission shows that 10 corporations and the companies within their control account for 39% of all contested violations currently in the backlog. A program of corporate-wide engagement with these companies to reduce contested

cases while improving mine safety and health could completely change the landscape of the contested case backlog.

Over the years the mining industry's approach to safety and health has shifted. Mining operators have switched over time to a reactive approach, relying on MSHA inspectors to identify safety and health hazards, and treating citations as a cost of doing business instead of having comprehensive safety and health programs of their own. MSHA is currently considering how the implementation of comprehensive safety programs approved by MSHA could serve as an incentive to reduce contested citations, and more importantly, as a means to improve safety by requiring operators to focus resources on improving safety rather than litigating citations.

Additionally, we could consider providing incentives for operators that do not contest. Operators currently receive a 10 percent reduction in proposed civil penalties for prompt, good faith abatement of the violations cited. Prior to 2007, MSHA applied a 30% reduction for prompt, good faith abatement. We are reviewing whether some type of additional financial incentive could be implemented to reduce the number of contested cases. MSHA will carefully review the potential benefits of any such approach. A critical component of any such review would be an analysis of the appropriate level of reduction or discount, whether and how such a discount would actually reduce the number of contested cases, the residual effects on uncontested cases of such a discount, and whether certain serious violations should be excluded from any incentive program.

Outreach

To complement the enforcement provisions of the Mine Act, MSHA is working to improve stakeholder outreach and education. MSHA recently launched two major initiatives to curb mining deaths and solicited the support and cooperation of the mining industry stakeholders. One is the "End Black Lung – Act Now" campaign which is aimed at ending the black lung disease in coal mining. The second is the fatality prevention program called "Rules to Live By," which targets the most common causes of mining deaths. These initiatives have been rolled out with the support of the mining industry, labor organizations and other stakeholders. Since my confirmation, I have met with several stakeholders in coal and metal –non metal industries including company CEO's and other executives as well as a number of industry associations and organizations to discuss ways to improve mine safety and health and compliance with the Mine Act. While these indirectly impact the backlog, this component of communication and education with the industry and other stakeholders is essential to our success as an agency.

Possible Commission Reforms

In addition to what I have outlined, there are several critical reforms that are within the purview of the Federal Mine Safety and Health Review Commission (Commission). For example, we endorse reforms that will increase the speed with which settlements are approved. Once a case is contested, any settlement must be approved by the Commission. A part of the backlog consists of cases that MSHA and the operator have agreed to settle, but the settlement agreement is pending before the Commission awaiting

approval. We endorse efforts by the Commission to focus on settlement approvals and simplifying the process for getting a settlement approved. We also think consideration should be given to expanding the use of settlement conferences over which a judge presides.

Additionally, MSHA believes the Commission should consider the use of simplified trial proceedings. Currently MSHA and SOL devote considerable resources to the pre-trial discovery process and other case preparation for matters which usually settle. A simplified trial process for certain categories of cases would have a significant impact on the time and resources it takes for cases to proceed to trial. The Department of Labor fully endorses consideration of reforms, and is prepared to provide technical support to the Commission in order to implement these reforms as quickly as possible.

Finally, we think it would be appropriate for the Commission to consider whether there are procedural reforms applicable to all types of cases that could streamline the process and reduce the number of contested cases. For example, uniform disclosures by MSHA of its evidence in support of a citation and by an operator of its grounds and supporting evidence for contesting a citation could create an incentive for the parties to evaluate their positions early in the process.

CONCLUSION

We believe that the ideas presented here can help reduce the current backlog issues and assist in preventing further case backlogs going forward. We are hopeful that our work will allow MSHA to meet its statutory mandates and continue an effective enforcement program that provides an appropriate deterrent to mine operators while

assuring that MSHA enforcement cases are aggressively litigated. We are committed to taking all necessary steps to address the backlog because it is an obstacle to ensuring the highest level of safety for our nation's miners. I look forward to working with the Committee to tackle this critical problem and I am happy to answer your questions.