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Mine Safety and Health: A Formula for Continued Success

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MINE SAFETY AND HEALTH: A FORMULA FOR CONTINUED SUCCESS

J. DAVITT MCATEER*

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I. INTRODUCTION

A quarter of a century ago, the United States Congress passed the Federal Coal Mine Health and Safety Act.¹ This landmark legislation was intended to eliminate the loss of life, serious injury, and illness that in 1969 were routine in the mining industry. It is fitting during this anniversary year that we applaud the significant progress that has been made in mine health and safety since 1969, assess what has proved successful and what has not, and consider new strategies for enhancing the workplace protection of the Nation's miners. We are at a turning point in the evolution of mine safety and health. We have the largest, the most productive, and most modern mining industry in the world. The time has now come to have the safest and most healthful mines as well.

Historically, mining has been one of the most hazardous occupations. That dubious distinction led to the passage of the first occupa-

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1. Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801-960 (Supp. V 1970).

tional safety and health laws in both the United States and Europe. Federal regulation of mining in the United States began in 1910, in the wake of a number of disasters, most notably the Monongah explosion in 1907, the worst disaster in the mining history of the United States. Subsequent disasters resulted in further expansion and evolution of the powers of federal regulators, culminating in the passage of the Coal Mine Health and Safety Act in 1969. This law required regular federal inspections of all coal mines and dramatically increased federal enforcement powers. In 1977, Congress strengthened and amended the 1969 Act to consolidate all federal regulation of the mining industry, both coal and noncoal, under a single statute, the Mine Safety and Health Act.² The Mine Safety and Health Administration (MSHA) is the federal agency that carries out the provisions of the Mine Act.

As mandated by the Act, a blanket approach to enforcement has developed. As Congress directed, MSHA conducts a specific number of inspections at all mines, citing all violations and assessing and collecting civil money penalties for those violations. The driving force of the statute's enforcement approach has been the prevention of major mining disasters.

This approach has resulted in a sustained decline in the number of serious mining accidents and injuries. Last year, mining accidents claimed the lives of 47 coal miners and 51 noncoal miners, less than half the numbers in 1977 and a fraction of the annual mining deaths experienced earlier in this century.

As gratifying as this downtrend may be, there is evidence that a plateau has been reached. Over the last five years, we have no longer experienced large annual decreases in the rates of serious and fatal injuries. Far too many disabling injuries still occur. Also, many nonfatal accidents easily could have resulted in fatalities, and the risks to miners' health continue to be unacceptable. The risk of incurring fatal injuries remains too high at small underground coal mines—a problem first identified years ago. Miners working at operations employing fewer than 50 miners face four times the risk of experiencing a fatal injury than those at larger operations. There has also been a disproport-

2. Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801-962 (1988).

tionate increase in the number of fatal injuries to employees of independent contractors performing work at mine sites.

II. ENFORCEMENT UNDER THE MINE ACT

In the 25 years since the passage of the 1969 Coal Act, all in the mining industry have learned valuable lessons on how to operate safe mines. Nonetheless, we continue to encounter some mine operators who ignore even the most basic safety principles.

As with all occupational safety and health statutes, the successful enforcement of the Mine Act must be measured by a continuing decline in preventable harm to miners. Our long-term goal must be to ensure that, without exception, an individual can devote a lifetime to a mining career and emerge healthy and unharmed, fully capable of enjoying a long and vigorous retirement.

Our traditional enforcement cycle and the insights derived from major accidents have brought us to our present level of success, but our strategy will require refinement to progress to a new level of mine safety and health. Spreading finite inspection resources across the board leaves little time or manpower to direct attention toward particular problems or specialized preventative programs. Limiting the focus to correcting problems highlighted by major accidents makes all in the industry susceptible to overlooking other safety and health problems which, in the aggregate, result in the largest share of death, injury, and illness. The need for immediate response to accidents can distract us from addressing the insidious long-term but no less debilitating effects of unhealthful working conditions. Finally, as some successes have been achieved, solutions for the problems that remain become more elusive. A more informed and thoughtful approach is the obvious next step in the long evolution of enforcement. Fortunately, Congress has given us a statute that will permit us to explore this crucial transition.

The skills, energy, and dedication of each of MSHA's more than 2,500 employees will be enlisted in fulfilling our statutory mandate. As Congress directed, we will continue to conduct inspections, to address miners' complaints of unsafe conditions or discriminatory treatment, to investigate accidents, and to provide technical and educational assis-

tance to the mining community. Reaching beyond these core activities to develop and implement innovative solutions to persistent problems, unresponsive to traditional approaches, will be a much greater challenge. One federal agency has neither the resources nor the insight to do this alone. Our success will depend in large measure on our ability to inspire and harness the creativity, ingenuity, and spirit of cooperation that exist in the mining community. Although we expect many significant and innovative ideas to emerge from management and labor, as well as the academic community, we here offer some possible points for consideration.

We must establish clear lines of accountability for health and safety at the corporate and individual levels of companies engaged in mining, and create the strongest possible linkage between the act of enforcement and the prevention of deaths, injuries, and illnesses in mines. We must learn better lessons from the single fatalities and serious injuries that continue to bring sorrow to miners and their families. We must also encourage miners to take an active role in safeguarding their workplace, and ensure that all miners are fully informed of both their rights under the Mine Act and the protections available to them when they exercise these rights. We must focus increased energy on the multitude of health risks that continue to threaten miners. Finally, to succeed in this ambitious agenda, we must pull all components of MSHA and the mining community together to improve the health and safety of miners.

III. OPERATORS' RIGHTS AND RESPONSIBILITIES

We must make a much stronger effort than before to directly link authority and responsibility. Our efforts must be directed to restoring the appropriate degree of accountability for safe and healthful mine operations at every level of the industry.

At the corporate level, enforcement must reflect the reality of the organization that operates a mine. If mine owners have control over health and safety conditions either directly or indirectly, for example, through production contracts, it follows that enforcement must be directed to include them. By identifying where the actual authority lies for operation of a mine and for the financial decisions necessary for

effective correction of hazards, and by citing a mine owner as well as the contract operator the owner has chosen to produce the commodity, we can direct enforcement where it can best achieve compliance with the Mine Act.

At the individual level, authority and responsibility also must be linked. Presently, MSHA regulations require certification of individuals to perform specific tasks, such as mine examinations and the collection of respirable dust samples. MSHA sees the need to develop requirements for renewal of such credentials and standardized procedures for removal of these credentials when the malfeasance or misfeasance of a certified person warrants it. Also, the creation of federal certification for those persons who exercise authority for mining operations, but whose duties do not currently require certification, must be addressed. We must hold mining professionals to the same standards of conduct now expected by the public for other professions.

Training as a prerequisite for initial certification as well as for certification renewal at some specified interval should also be considered, ensuring that supervisory personnel at all levels are adequately trained. Such schemes are commonplace in virtually every other professional undertaking.

Finally, an inordinate number of health and safety problems are caused by a small number of irresponsible mine operators, and these problems must be addressed firmly. An aggressive criminal investigations program is important when operators engage in criminal conduct. These situations present significant problems as well as opportunities for major safety and health gains.

IV. MINERS' RIGHTS AND RESPONSIBILITIES

Although mine operators bear primary responsibility for preventing accidents and illnesses, miners also have a role in ensuring the quality of their work environment. The statute provides one instance for miner accountability and penalty assessment—smoking. One important move in the right direction would be a universal attitude of zero tolerance for smoking in underground coal mines, which has been a contributing factor in far too many mine explosions.

If we expect miners to share responsibility, we must also forcefully and swiftly administer the protections that the Mine Act provides them. When miners exercise their statutory rights, retaliation or retribution by their employers should not be a common reaction and should not be tolerated. MSHA will meet its statutory mandate with timely investigation of and initiation of legal action for discrimination cases with merit. Miners, just as mine operators, should work to see that the law is followed. When miners and mine operators know the law and follow it, the purposes of the Mine Act will be achieved.

V. HEALTH ISSUES

An important goal of the Mine Act is to ensure that a life spent working in the mines does not result in a gradual deterioration of health. However, in some mines, the risks to miners' health from exposure to mine dust, toxic substances, and other environmental conditions continue to be unacceptable.

Exposure to respirable coal mine dust has been regulated by statute for nearly 25 years, but MSHA's dust-enforcement program has suffered numerous problems. While much progress has been made, some coal miners continue to be exposed to levels of respirable dust that create risks to their health with relentless predictability. We believe that we are at a point in history where we should be able to determine and control, with accuracy and confidence, the quality of the air miners breathe on the job. Action toward this goal will require not only safeguarding the integrity of the dust sampling process, but also enhancing its effectiveness.

As part of our increased attention to health issues, MSHA plans to develop revised air quality standards and new hazard communication standards. MSHA also intends to examine and reevaluate other health programs, to ensure that both Agency regulations and policies and procedures are designed to meet the necessary objectives. Additional regulatory initiatives may be needed to deal effectively with the long neglected area of miners' health.

VI. ENFORCEMENT WITH A PURPOSE

Just as with enforcement of traffic laws, fines and other punitive measures can and do motivate compliance with the law, but an enforcement stance that is solely punitive has not proven to be the most successful or progressive approach for ensuring achievement of our health and safety goals. We must enforce the law with a purpose—and that purpose is to prevent future accidents, as the Act mandates.

Over time, any enforcement bureaucracy can inadvertently regress into the position of carrying out the letter of the law without fulfilling the law's spirit. We must guard against this happening by looking beyond enforcement statistics, such as the number of inspections conducted and citations and orders issued, to verify that the objective of these activities—a safe and healthful workplace—is being achieved. When inspectors write citations for violations, one question that should also be addressed is what corrective action will permanently eliminate the problem?

VII. PREVENTION

In the past, we learned hard lessons about mine safety through major disasters. Blessedly, these grim educational opportunities have become significantly less frequent. But we as a federal agency, and more importantly, the mining community as a whole, must direct our attention to accidents that kill and injure in significant numbers, one at a time. We must use every accident, regardless of the severity, to prevent the next one. To do that, everyone involved—MSHA, management, and labor—must maintain the focus on uncovering the causes of accidents, devising and implementing preventive measures, and educating and motivating employees at all levels of the mine.

To further refine our approach, we must address incipient problems before they develop into accidents. Such measures will include conducting special emphasis initiatives at both local and national levels. For example, this year, our expanded disaster prevention program called the "Winter Alert" campaign alerted the industry of the need to deal with barometric changes and dry air that can increase explosion hazards in underground coal mines in the colder months. During the

winter alert campaign, MSHA sent more than 1,000 inspectors, supervisors, and specialists to conduct spot checks for critical safety violations and to talk directly to mine operators and miners about the alert. Also, MSHA supplied more than 200 public service announcements to radio and television stations in the mining fields.

Moreover, in the metal and nonmetal industry we issued a special hazard alert to management and labor at salt mines, which were working overtime to meet the national demand for road salt during a particularly severe winter. There is also a newly designed preventative effort to give special attention to high-risk situations in cement plants.

These are only a few examples of recent initiatives designed to prevent accidents. We must continue to identify other opportunities to detect and eliminate discrete hazards before they are permitted to develop into conditions that may be life-threatening.

We must never accept the flawed fatalistic attitude of the past that deaths, injuries, and illnesses are the unavoidable cost of mining. The United States is among the most technologically advanced mining countries in the world, and has served as a model over the last century for how to mine productively. The Mine Act is one of the most stringent worker protection statutes in the world. We possess the requisite legislation, as well as the resources, the expertise, the technology, and most importantly, the motivation to evolve into a global model for occupational safety and health.