

Written Statement of Charles J. Baird, Chairman
Coal Operators & Associates, Inc.
Before the House Committee on Appropriations
Labor, Health and Human Services, Education and Related Agencies Subcommittee
March 25, 2014

Chairman Kingston and Ranking Member DeLauro:

My name is Charles J. Baird and I am the Chairman of Coal Operators and Associates (COA), a coal industry trade association headquartered in Pikeville, Kentucky. COA's members are small and medium-sized underground and surface coal mining operations in eastern Kentucky. I appreciate the opportunity to present testimony regarding issues our operators and their employees face on a daily basis with the U.S. Department of Labor's Mine Safety and Health Administration (MSHA).

COA and our members consider the safety and well-being of our miners to be our first and foremost responsibility. Many of our members are family-run companies and the miners employed by them are family and friends and their safety is the number one priority of each and every coal company.

At the time of its creation, MSHA, coal companies and their respective employees worked together to achieve a common objective of a safe workplace, reducing workplace injuries and eliminating fatalities. In addition to MSHA, each coal producing State has enacted mine safety laws and regulations. The State agencies desire to work together, in a cooperative fashion, helped augment the various programs and initiatives undertaken by MSHA. Unfortunately, MSHA's attitude of cooperation and working together to insure the safety of each and every miner is no longer the case.

I want each of you to understand why I am appearing before you today instead of mine managers or miners. If any of our members and/or their employees appeared before you today and told you what they encounter on a daily basis from MSHA, they would be out of business and out of a job before their testimony concluded. MSHA's attitude and method of operation is very simple – any operator who wishes to discuss an issue or problem with the agency's decision or voice concerns is met with resistance and increased inspections for no other reason than an operator has said something and, quite simply, MSHA can. The above is not an isolated instance – this type of behavior is the norm, not the exception.

I make these points to indicate to you in the most serious terms possible what the miners of the eastern Kentucky coalfields are encountering on a daily basis. I am not here "crying wolf" as many people assume when an industry representative voices problems about a regulatory agency. These are real examples, real stories and real situations of an agency that has evolved from one that was created by Congress to work with States, operators and miners to create a safe working environment to one that is completely adversarial, intent on writing the most serious violations as possible regardless of the circumstances. MSHA's actions are endangering the thousands of men and women in the coalfields who still have jobs.

In 2008, the Obama Administration declared war on Appalachia and the economy of our region by deciding that they were going to do everything possible to eliminate the Appalachian coal industry. As a result, we have lost thousands of jobs, including approximately 5,000 jobs of men and women who were employed directly in the mining industry in eastern Kentucky alone. And yet MSHA continues to expand enforcement and expand their inspections to the point

where today there are more inspectors than there are mines in eastern Kentucky. Many of our mines have more inspection hours than production hours.

MSHA comes before this Subcommittee to ask for funding but they provide you with misleading information. For instance, MSHA is now classifying underground mines in Pike County, Kentucky that are closed and sealed as a "surface" mine that "need to be inspected". MSHA does not let inactive mines move to "abandoned" status in order for MSHA to show they have X # of mines they have to inspect. The Subcommittee should require MSHA to tell you the number of "authorized representatives" they have per District (rather than just identifying the number of "inspectors") and the number of active mines which produce coal in each District. Ask them to provide you with a list of inspection hours spent at each mine, by all authorized representatives (not just inspectors), and the number of citations issued and the fines levied.

As I noted above, MSHA has destroyed the very foundation upon which it was created – the intent of the Mine Safety Act and the other legislation passed by Congress regarding mine safety had always sought to create and implement cooperation, training and instruction and mutual respect among the regulated, the regulator and the States. That is gone. The leadership of MSHA has created a culture of being an adversary, of being in complete conflict with the industry they are overseeing and the very miners they are seeking to protect.

Again, the culture today has any authorized representative coming on site and writing as severe a violation as possible regardless of the circumstances. In a recent analysis, 41% of ALL S and S violations (Significant and Substantial) written were later changed to non- S and S violations (or vacated, dismissed or withdrawn) and for a three-year period (2010-2013), 29% of all the S and S violations were changed to non-S and S or vacated, dismissed or withdrawn.

Why does that occur? Because of what I said above and because there is absolutely NO accountability where this agency is concerned and no repercussions of any kind for authorized representatives to do whatever they wish.

The Committee on appropriations, just a few months ago, gave specific directions to MSHA regarding issues concerning the proposed Dust Rule. Yet MSHA has decided it is above the Congress and is requiring ventilation plans be done in such a way as to meet this proposed standard before its finalized and in contradiction to the actions of the Congress and this Committee.

Within the current budget request, MSHA has proposed eliminating the State's safety grants, one of the most effective tools for miner safety we have or ever had. Cooperation with States is emphasized in the Act, but MSHA doesn't want to cooperate. I would urge the Members of the Subcommittee to look at and consider the success and efficiency of the State programs. Again, for a coal mine, we have a complete secondary layer of inspection at the State level. But the states do things the right way. They do their job, they respect the laws under which the act, they try to work with the operators and the miners rather than considering them adversaries and I would encourage the Congress to look at letting the States be the primary regulators with MSHA in an oversight role. Every other regulatory program associated with the coal industry, and many other industries particularly from the environmental side, has a methodology for granting that State "primacy" or primary responsibility for implementing the requirements of a particular law. Our States, and Kentucky in particular, do an outstanding job with mine safety because Kentucky believes we should all

work together to insure safety versus the current MSHA attitude and I would hope the Congress would consider this approach.

I have provided you with only a small amount of information regarding the abuse of power committed by this agency on a daily basis and an endless number of examples can be provided to you in a confidential manner. I have had to do this because our operators fear retaliation and retribution that this agency can take on them and their miners if they say anything. The miners resent MSHA and fear for their jobs, not their safety. Secondly, I cannot emphasize enough that these statements should not create a doubt or question of any kind of the commitment of our mines to the health, safety and wellbeing of our miners.

I want to thank Chairman Rogers, Chairman Kingston, Ranking Member DeLauro and the Members of this Subcommittee for allowing me and, by extension, the men and women of the coal industry in eastern Kentucky, to testify before you today and to ask for your help and assistance with these issues that are destroying thousands of jobs in a part of the country that cannot afford to lose one job. The Congress and this Subcommittee is one of the few places we can turn to and request help and I pray that you will help bring this agency under control, create accountability where none currently exists, have MSHA reconsider and reevaluate this adversarial culture.