

# MINE DISASTER AT QUEECREEK

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**HEARING**  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

**SPECIAL HEARING**  
OCTOBER 21, 2002—JOHNSTOWN, PA

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## MINE DISASTER AT QUEECREEK

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MONDAY, OCTOBER 21, 2002

U.S. SENATE,  
SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN  
SERVICES, AND EDUCATION, AND RELATED AGENCIES,  
COMMITTEE ON APPROPRIATIONS,  
*Johnstown, PA.*

The subcommittee met at 9:30 a.m., at the Public Safety Building, fourth floor, Hon. Arlen Specter presiding.

Present: Senator Specter.

### OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Good morning, ladies and gentlemen, the U.S. Senate Appropriations Subcommittee on Labor, Health, Human Services, and Education will now proceed with this hearing on the mine disaster at Queecreek.

Senator Tom Harkin, chairman of the committee, and I in my capacity as ranking member, decided that this should be a field hearing in Johnstown, because it is close to the site of this incident, and to give as many people as possible in the area an opportunity to be present and to participate in this hearing.

The Queecreek mine disaster occurred on Wednesday, July 24 of this year at 8:45 p.m. There was then a worldwide vigil led by Governor Mark Schweiker of Pennsylvania. The eyes and the ears of the world were on nine miners trapped in Queecreek some 300 feet below the surface, approximately 25 stories down where an estimated up to 77 million gallons of water had poured into the mine.

The incident occurred, according to preliminary reports, from the so-called Saxman mine which had been mined 40 years earlier. The maps were incomplete and the water poured in.

As people all over the world watched, hope was very thin for the nine trapped miners. Nine other miners had been able to fortuitously escape. Then on Saturday, July 27 at 10:15 in the evening, the first miner was rescued and eventually all nine miners were brought to safety ending at 2:45 a.m.

Governor Schweiker, who is here today as our lead witness, was at the scene really to inform the people around the world who were hanging on every detail that the miners had been saved, which was truly a miraculous event.

There has been extensive publicity on this issue. There is an article in yesterday's Pittsburgh Tribune-Review which sets the stage in a succinct way, and I'm going to quote from a couple of the paragraphs:

Days before nine miners slogged through bone-chilling water in a desperate dash to save their lives, they warned bosses their tunnel was 'wet and getting wetter' and expressed serious concerns about the strength of a 'soft' ceiling in the Quecreek Mine.

The miners revealed harrowing details of their final days toiling in a crumbling mine: roof bolts holding off a tunnel collapse were pinned to an increasingly soupy ceiling of thin shale. Icy water "was gushing" around the steel nails "like a shower." And as the water edged closer to the spit of dirt dividing them from drowning, they tacked a tarp across the tunnel to avoid looking at what they thought was a bleak, wet death.

The Tribune-Review article goes on to raise certain questions. Raising concerns whether the corporation, which we will hear from later, played as the Tribune Reviewed called it, "Russian roulette" with their lives by giving incomplete and misleading mine maps to the Government. That's a question which we will be inquiring into. [The information follows:]

[From the Tribune-Review, October 20, 2002]

#### MINERS SENSED DANGER BEFORE DISASTER

(By Debra Erdley and Carl Prine)

Days before nine miners slogged through bone-chilling water in a desperate dash to save their lives, they warned bosses their tunnel was "wet and getting wetter" and expressed "serious concerns" about the strength of a "soft" ceiling in the Quecreek Mine.

On the eve of public hearings into the Somerset County mine disaster, the miners revealed harrowing details of their final days toiling in a crumbling mine: Roof bolts holding off a tunnel collapse were pinned to an increasingly soupy ceiling of thin shale. Icy water "was gushing" around the steel nails "like a shower." And, as the water edged closer to the spit of dirt dividing them from drowning, they tacked a tarp across the tunnel to avoid looking at what they thought was a bleak, wet death.

Another bombshell: They lacked a vital tool—a horizontal driller—designed to let them peek into unseen water-and gas-filled chambers. According to the miners, it wasn't even on site.

On July 24, as their watch hands arced past 9 p.m., the continuous mining tractor took one bite of coal too many. Suddenly, 18 men on two crews were swallowed up by 77 million gallons of frigid flooding, forced to stumble for higher ground in a frantic race against a rising black tide from the neighboring abandoned Saxman Mine.

Nine made it 25 stories up to join a daring rescue orchestrated by federal and state experts, who later termed the mission to save Randy Fogle, Mark Popernack, Tom Foy, Blaine Mayhugh, John Philippi, John Unger, Ron Hileman, Robert Pugh and Dennis Hall "a miracle."

But seven of the nine rescued miners fear these same agencies—the U.S. Mine Safety and Health Administration and the state Department of Environmental Protection—might be overlooking damning clues into what went awry at Quecreek. Indeed, the regulators themselves could have botched the life-saving permitting and inspection processes.

They also question whether Mincorp, a Delaware holding company controlling the Quecreek coal fields, played "Russian Roulette" with their lives by giving incomplete and misleading mine maps to the government.

"I want some answers," Hall said.

Nicknamed "Harpo" by his crew, the lanky coal car operator with three decades of underground experience phoned a nearby nine-man crew that water was coming their way and that his men were already trapped. His warning saved their lives.

He hopes that by speaking out now he can stop other miners nationwide from piercing poorly mapped mine tunnels, called "voids." Mines dripping with water are not uncommon, he said, but sometimes an increasing daily deluge points to potentially deadly problems.

He said miners should be given the best possible information before they make life-or-death decisions underground.

"Somebody was damned sure responsible for what happened to us, all of us. Somebody was responsible for not obtaining the right maps and we feel compelled to find out who that was. This never should've happened, and I'm damn lucky to be alive," Hall said.

“We trusted them. We thought we weren’t that close to another mine. We had no idea we were so close to a void in the maps. And we damned sure would have done the precautions if we’d known.”

Popernack and Fogle have not spoken publicly on the issue. But Hall, who is represented by Pittsburgh trial lawyer Howard Messer, joined his attorney and six other miners in calling on Republican Gov. Mark Schweiker to redirect a committee researching shoddy mine maps to discover instead exactly what went wrong in July.

That appears unlikely.

“It’s irresponsible of Mr. Messer to go to the commission and demand details of what happened at Quecreek when he knows very well the commission was not formed for that purpose,” said Schweiker spokesman David LaTorre, who insists a “separate DEP investigation will provide the answers the families are looking for.”

“This is the standard policy of conducting an investigation,” LaTorre said. “Once the investigation is complete, all aspects of that investigation will be made public. It is disappointing to Gov. Schweiker and others in the administration that critics out there throw blind accusations that nothing is being done. No one is closer to those mining families than Gov. Schweiker.”

While that could be true, the governor has spent less time with the miners than their employer’s lawyer, who sat through the miners’ private interviews with federal and state investigators and was offered the chance to question them.

“Why is this so secret?” Messer countered. “What is it about all the information they have collected that can’t be shared with public? I think a grand jury is necessary.”

Mincorp officials continue to insist Black Wolf Coal Co. hired and controlled the Quecreek workers, that Black Wolf was a separate contractor led by a former Mincorp executive, and that Mincorp was unaware the miners had complained of safety conditions.

Mincorp’s subsidiary, PBS Coals, had an exclusive contract to purchase 100 percent of Quecreek’s coal. But marketing director Tim Phillips said no executive knew about increasing flooding in the Quecreek chamber—even though that would have sliced production.

“You’re talking about operation things we know nothing about,” Phillips said.

Black Wolf officials declined to comment on the miners’ concerns. Former workers from the closed Saxman mine and other nearby shafts said they alerted company officials about voids in the maps that could lead to gas or water tragedies. During public permitting hearings in 1999, 41 neighbors, including chemists, farmers and former miners, vainly urged regulators to nix the controversial Quecreek project.

#### INVESTIGATION CONTROVERSY

Since the miners’ rescue, Quecreek’s government investigations have proven equally controversial. In July, Schweiker promised he’d play a “maximum” role in a future public probe to determine exactly what went wrong and why. But two months later, his original goals had changed.

In September, Schweiker tasked his blue ribbon commission—the lone panel conducting open meetings—with finding ways to prevent accidents caused by mine voids. Drawn from industry, labor, government and academia, the commission met in places as far away as Pottsville, and quickly distanced itself from Quecreek specifics.

Commission organizers claimed they couldn’t find meeting places in Somerset. Miners in attendance grumbled about the panel’s increasingly bookish discussions.

Prodded by disgruntled miners, the nine-member panel agreed to conduct a public meeting Tuesday in Somerset to include their testimony in the final study. The commission gave the miners several questions to answer with their lawyer.

Messer hopes to spark public debate about the commission’s goals. He worries federal and state probes already are compromised by coal industry insiders and agency self-interest.

He points to an increasingly cozy relationship among DEP’s Bureau of Deep Mine Safety, federal inspectors and company officials. Once assumed to be separate investigations, the federal and state probes became so indistinguishable that both MSHA and DEP agents joined to interview the Quecreek miners.

Both have “skeletons” to hide, according to Messer and the miners.

DEP regulators approved the original permit and conducted recent inspections that might have overlooked problems. MSHA overseers signed off on ventilation and site safety plans, and also inspected the shafts in July, one week before the disaster.

Scott Roberts, DEP’s mineral resources chief, said his staffers loaned to the MSHA investigation were actually ordered by federal directors not to discuss the probe with him.

While many federal accident probes rely on confidential testimony, this one featured at least one company lawyer present for every interview. At one point, a coal company attorney was even offered the chance to question the Quecreek miners. That angered outside safety experts and lawmakers.

"One of the reasons we think public hearings are better is, with closed hearings, you have the miners sitting there with no protection," said Joe Main, safety director for the United Mine Workers. "We don't believe management peering over the miners' shoulders is right when the management that is peering . . . may be found guilty of some infraction in the end."

#### MORE CRITICISM

U.S. Senator Paul Wellstone, a Minnesota Democrat who chairs a committee overseeing federal mining laws, castigated state and federal handling of the Quecreek disaster.

"Like every MSHA accident investigation, this one needs to find the particular causes in a timely and publicly open way so workers and the community can see that the government is on their side and accountable," Wellstone said.

"At the same time, this was the country's third catastrophic coal mining accident in two years. "The agency's job is also to find and explain any systemic causes of these repeat disasters. There are always specific conditions, but I don't think we can let the industry or the agency off the hook when accidents keep happening."

Federal and state investigators are now scrambling for answers to the miners' latest disclosures. Told Thursday that Quecreek's crews didn't have an auger in their section to find deadly gas or water chasms, DEP officials couldn't locate in their paperwork whether they already knew that—or not. "If they could have been in the position to drill, there should have been drills there to drill with," Main said.

"And if drills weren't available, why weren't they?" State and federal watchdogs declined to discuss what investigators have discovered, but they have long defended the lack of public hearings.

As early as August, U.S. Department of Labor mining chief David Lauriski defended his secret probe. He said a public hearing wouldn't yield any new clues. DEP spokesman Dennis Buterbaugh agreed. He said Friday that his agency was determined to "get to the bottom of this" and that state investigators were "working every day" on a difficult, "time-consuming" probe.

"We've tried to be thorough in our investigation. We certainly want to get it done as soon as reasonably possible." Meanwhile, some of the miners want their story told before the governor's panel shuts down. They insist the public should learn that crew leader Randy Fogle was a hero, and that he pressed management to vacate the sloshy section days before the disaster.

Last week, Fogle and Mark Popernack were on the Hollywood set of the Disney television movie about the Quecreek rescue and could not be reached for comment.

Previously, Popernack and some of the other miners had suggested Quecreek was a "completely dry mine" and that they would willingly return to work underground.

Senator SPECTER. Other questions were raised about DEP regulations which had approved the original permit and conducted inspections and the issue is whether they were sufficiently thorough. MSHA oversees and signed onto a Ventilation and Site Safety Plan and also inspected the shafts 1 week before the disaster, and that too will be a matter for our inquiry.

The Secretary of Labor has responsibility under Federal statutes to inspect the mines, deep mines, four times a year and surface coal mines at least two times a year. For those who have had the opportunity to go into a mine as I have on a couple of occasions in connection with my Senate responsibilities, it is an awesome, harrowing experience to go 25, 30 stories down—Governor Schweiker is nodding, he's been there—to ride in a car where you have no room to sit up straight. The miners perform a very important function in our country, they provide energy for our needs and their safety is of paramount concern. Too often these mine disasters occur.

One of our inquiries will be directed at the U.S. Congress itself and the Senate and this subcommittee as to whether we have funded adequately.

Each year for the past decade plus we have increased mine safety as we have moved along. We have been in touch with United Mine Workers—the president of the State Association will be here today—and in touch with the Miners Association. This is an inquiry of the utmost importance and we intend to find out what the facts are, identify the cause of the incident and take whatever steps are necessary to be as sure as we can, that there is no recurrence.

**STATEMENT OF HON. MARK S. SCHWEIKER, GOVERNOR OF PENNSYLVANIA**

Senator SPECTER. We're joined today by Pennsylvania's distinguished Governor, Mark Schweiker, who took the oath of office on October 5 when Governor Ridge went off to be the Federal official on Home Land Security. Governor Schweiker comes to this position with a very distinguished record in public service and in business, he had been a Commissioner in Bucks County, and held key positions at Merrill Lynch and McGraw Hill. Governor Schweiker holds a bachelor's degree from Bloomsburg University and a master's degree from Rider University.

Governor, I want to compliment you again on your holding vigil and being the spokesman and keeping things together at a very, very difficult time. We look forward to your testimony.

Governor SCHWEIKER. Thank you, Senator Specter, and I would mention that as you referenced the significant dates in the summer. The miners and their families, who are literally behind me, will never forget those dates and I share that sentiment.

I do appreciate the opportunity to testify today before your Committee.

First, I'd like to thank everyone who responded and worked tirelessly to save nine very brave men. Through this I was able to witness firsthand the enduring hope and spirit of this great country. In particular, I would like to thank Dave Lauriski, who is also sitting behind me, of MSHA, and Dave Hess, my Secretary of Environmental Protection is to my right.

The rescue of nine Pennsylvania miners from the Quecreek mine in Somerset County brought together all Pennsylvanians and inspired a Nation. Those 3 days also motivated me to make sure that an event like this never happens again. By now you know the outcome of that final night. We went nine for nine, saving all the miners who were trapped, a true miracle.

The day after the rescue I announced the formation of a special commission to investigate the causes of the Quecreek mine accident. I also tasked this commission to research better methods to determine the exact location of abandoned mines and to improve general mine safety. Dr. Raja Ramani, Professor Emeritus of Mining and GeoEnvironmental Engineering at the Pennsylvania State University, was charged with leading the panel. Dr. Ramani has more than 40 years of experience in mining as a recognized expert in mine design, operation and safety practices. The Commission will review existing mine procedures and make a comprehensive

set of recommendations on how to improve mining operations and safety. I look forward to receiving Dr. Ramani's report shortly in mid November.

My goal is to make sure Pennsylvania continues to be a national trailblazer in mine safety. Pennsylvania laws concerning mining in the Commonwealth go back as far as 1870. Pennsylvania enacted the first major mining laws in the anthracite region in 1891 and in the bituminous region in 1893. In fact, the 1969 Federal Coal Mine Health and Safety Act was written with the Pennsylvania mining laws as a guide.

Over the last 4 years, Pennsylvania established a record for the fewest number of underground mining fatalities in history for a 4-year period. While Pennsylvania ranks fourth in the Nation in coal production, we account for only 8 percent of mining fatalities. Nationally, for the fourth consecutive year, workers' lost-time accidents have also decreased. Now these milestones can be attributed to the Bureau of Deep Mine Safety in partnership with industry, labor and MSHA and especially to the workers mining Pennsylvania's coal each day.

However, the events of Quecreek reminded us all that our commitment to safety will always remain an ongoing task. The commission I established is only the first step toward improving mine safety. We must make sure that all existing mine maps are available to the relevant State agencies and the maps must be centrally warehoused and digitized in order to ensure their preservation and, importantly, their access. These necessary actions will be expensive and will require State and Federal investment. Digitizing thousands of mine maps, for example, will take several years. Technology and staff expense will be great. But we cannot afford to wait.

In addition to establishing the commission, I took action to safeguard the lives of coal miners in Pennsylvania by ordering bituminous deep mine operators to submit updated information on where water-filled mine voids are located. No one can afford to rely on old maps. My order requires bituminous mine operators to positively identify voids ahead of where they are mining if they are within 500 feet of a water-filled mine void. This new requirement more than doubles the previous 200-foot requirement.

I will demand that every possible precaution be taken to keep our brave miners safe. To that end, my administration pledges to vigorously, to vigorously enforce all mine safety regulations.

As you know, Senator, Dave Hess, my Secretary of Environmental Protection, is here and is seated on my right and will delve into some of the specifics of what his department is doing in this important regard.

#### PREPARED STATEMENT

In closing, the miners who work in Pennsylvania's vast coal reserves are some of the most courageous people I know. It is the responsibility of all of us, the Commonwealth, the Federal Government and coal companies, to ensure a safe work place for our miners. In Quecreek, Providence smiled on us, now we must persevere and make sure Pennsylvania's mines are the safest in the world. We owe it to the 18 miners who barely made it out of Quecreek

alive. We owe it to their families who suffered with fear and despair for 77 hours, and we owe it to every miner who puts his life on the line when they go to work to support their loved ones.

Thank you, Mr. Chairman, and I'm happy to answer any questions you may have at the appropriate time.

[The statement follows:]

PREPARED STATEMENT OF GOVERNOR MARK S. SCHWEIKER

I appreciate the opportunity to testify today before the Committee.

First, I would like to thank everyone who responded and worked tirelessly to save these men. I was able to witness first hand the enduring hope and spirit of this great country. In particular, I would like to thank Dave Lauriski, who is sitting behind me, and Dave Hess, my Secretary of Environmental Protection. Both of you are primarily responsible for the success of that rescue operation.

The rescue of nine Pennsylvania miners from the Quecreek Mine in Somerset County brought together all Pennsylvanians and inspired a nation. Those three days motivated me to make sure that an event like this never happens again. By now you know the outcome of that final night—we went nine for nine, saving all the miners who were trapped. A true miracle.

Pennsylvania has been and continues to be a trailblazer in mine safety. Pennsylvania laws concerning mining in the Commonwealth go back as far as 1870. Pennsylvania enacted the first major mining laws in the anthracite region in 1891 and in the bituminous region in 1893. The 1969 Federal Coal Mine Health and Safety Act was written with the Pennsylvania mining laws as a guide.

Over the last four years, Pennsylvania established a record for the fewest number of underground mining fatalities in history for a four-year period. Pennsylvania ranks 4th in the nation in coal production and we account for only 8 percent of mining fatalities nationally. For the fourth consecutive year, workers lost-time accidents have also decreased. This milestone is attributed to the Bureau of Deep Mine Safety in partnership with industry, labor, and MSHA, and especially to the workers mining Pennsylvania's coal each day.

However, the events of Quecreek reminded us all that ours is an unfinished task. Mine safety is not a destiny to be arrived at but a continuous journey.

On July 24th, eighteen employees of the Black Wolf Coal Co. were working the Quecreek Mine. Just before 9:00 p.m., nine of the crew operating their Continuous Miner broke through to the water-filled Saxman Mine, abandoned by the Saxman Coal and Coke Co. in the late 1950's. The miners mistakenly believed, based on faulty maps, that they had 300 feet of barrier remaining when the breakthrough occurred.

Millions of gallons of water rushed in, flooding the mine. The crew at the breakthrough warned a second group of miners closer to the entrance of the rapidly rising water. Those miners were able to escape as the water flooded in, knocking many of them off their feet. The remaining nine miners were quickly forced to find the highest point of the mine to escape the rising water.

The miners were trapped in the far reaches of the mine—about 8,000 feet from the mine entrance and 250 feet below the surface. Our challenge to bring the miners to safety and these men back to their families had begun. It was a race against time.

During my first meeting with the families, as I was leaving to return to the site of the rescue operation, I literally had moms and dads and wives grabbing my arm saying, "Bring my son up," and "Bring my husband home." I realized this was about rescue, not recovery. This was about bringing them back up, and we determined to do just that.

The Pennsylvania Department of Environmental Protection first received word of the accident at 9:30 p.m. Richard Stickler, director of the department's Bureau of Deep Mine Safety, and Joe Scaffoni, chief of the Division of Bituminous Mine Safety, immediately began to devise the first rescue efforts.

Joe Scaffoni coordinated with mine officials who provided him with estimated elevations of where the breakthrough occurred and the high point in the mine where the miners may have sought escape from the rising water. Working with that information, department staff provided elevation figures, underground survey points and ground-level coordinates to engineers who used GPS equipment to determine where to drill a 6-inch air hole.

On July 25th, at 12:50 a.m. a drilling rig arrived on scene and by 2:50 a.m. began drilling an air hole. By 5:00 that morning, the air hole reached the miners. Rescue workers tapped on the drill three times on the surface, and miraculously the miners

tapped back nine times telling us that all nine miners were alive. The compressed air pumped into the hole created an air pocket that helped hold back the water while the water pumping continued.

That evening equipment arrived to begin drilling a 36-inch rescue shaft that later became known as Rescue Shaft #1. Early on the morning of July 26th the 1,500 pound drill bit broke at a depth of 105 feet. Another drill was set up to drill Rescue Shaft #2, two feet away from the first.

We were concerned about the possibility that the miners could suffer from “the bends” once they were brought to the surface. We called on the U.S. Navy, and they responded by transporting nine hyperbaric chambers, a portable hyperbaric stretcher and personnel to the scene.

By late evening on July 26th, drilling resumed on Rescue Shaft #1. Final rescue plans began to take shape with help received from CONSOL Energy of Washington County, PA—an award winning team that specializes in mine rescue—staff from DEP, the federal Mine Safety and Health Administration and the Black Wolf Coal Co.

At 10:13 p.m. on July 27th Rescue Shaft #1 broke through to the chamber. Communications equipment was lowered into the mine, and at approximately 11:00 p.m. verbal contact was made with the miners. Amazingly, they were in relatively good spirits. They requested “snuff and food.”

At 12:30 a.m. on July 28th, rescue workers lowered the cage into the shaft with food, blankets and other supplies. At 1:00 a.m. the first miner was brought to the surface, and by 2:45 a.m. the last miner had been safely taken out. All were taken for medical observation and treatment and only one miner suffered from the slight case of “the bends.” He received treatment in the hyperbaric chamber. By mid-week all nine had been released from the hospital and returned to their families.

We kept our promise. We brought them home. It was a team effort in all respects. The Commonwealth’s response teams included the Department of Environmental Protection, the Pennsylvania Emergency Management Agency, the Pennsylvania State Police, the Pennsylvania National Guard, the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission.

We are also grateful for the outside assistance that ensured a successful rescue. Pennsylvania’s efforts were assisted by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration, and numerous emergency workers from the area.

Governor Bob Wise of West Virginia called and offered his support, and it was drilling equipment from his state that successfully drilled Rescue Shaft #1. We also received the help and support of Pennsylvania’s Congressional delegation in coordinating federal resources and response. Private organizations from West Virginia, Maryland and New Jersey donated pumps to assist in the rescue effort.

Now we must do our part, both in Pennsylvania and across America, to ensure an accident like this never happens again. Our miners and their families need to know that they are going into the safest possible working environment.

The miners who work in Pennsylvania’s vast coal reserves are the mining industry’s most important resource. The economic impact that mining provides this Commonwealth is immense. The combined direct and indirect economic benefits from coal mining exceed \$11 billion. Without our miners, this would not be possible, and it is the responsibility of the Commonwealth to ensure a safe workplace for them. This time Providence smiled on us, and we were able to return nine for nine. Now we must persevere and make Pennsylvania’s mines the safest in the world.

The day after the rescue, I announced the formation of a special commission to investigate the causes of the Quecreek Mine accident. I also tasked this Commission to research better methods to determine the exact location of abandoned mines and to improve general mine safety. I named Dr. Raja V. Ramani, Professor Emeritus of Mining and GeoEnvironmental Engineering at the Pennsylvania State University, to lead this panel. Dr. Ramani has more than 40 years of experience in mining and is a recognized expert in mine design, operation and safety practices.

The Commission will review existing mining procedures and make a comprehensive set of recommendations on how to improve mining operations and safety. I look forward to receiving Dr. Ramani’s report in mid-November.

Specifically, the commission will make recommendations regarding each of the following:

- The best engineering practices to be used in the design and layout of modern mines that are adjacent to abandoned mines.
- The regulatory policies and permit review procedures for permitting mines adjacent to abandoned mines.
- The practices and procedures of mine operations to detect mine voids.

- The training of mine workers who operate mines adjacent to underground mines.
- The inspection and compliance of the mine operations with the approved mine plans and operating requirements.
- The rescue and response procedures, including policies for sharing information with families of miners affected by the accident.

To date the commission has held two meetings. The first was here in Johnstown on October 3rd, followed by a hearing on October 9th in Pottsville. The commission will host a hearing again tomorrow in Somerset and will meet with the Pennsylvania Coal Association and the United Mine Workers of America on Wednesday, also in Somerset.

On August 28th, I took action to safeguard the lives of coal miners in Pennsylvania by ordering bituminous deep-mine operators to submit precise information on where water-filled mine voids are located. We will no longer rely on old maps.

My order requires bituminous mine operators to positively identify voids ahead of where they are mining if they believe they are within 500 feet of a water filled mine void. This new requirement more than doubles the current 200-foot requirement and provides miners with the extra margin of safety they need to deal with this unknown.

Mining companies must provide the accurate information we're looking for, or we will not permit them to continue to mine. I don't ever want to see another community go through what the good people of Somerset County were forced to endure for 77 hours. If we can't rely on maps, then we have to take every precaution possible to keep our brave miners safe.

We stand ready to work with the federal government in ensuring that our mines are safe, and that when accidents do happen, emergency response and rescue efforts on both the state and federal levels are well-coordinated and well-executed.

Pennsylvania and the federal government must work together to make sure that all existing maps are readily available. Production records and mine maps must be archived and stored properly so that they are not vulnerable to deterioration over time.

Scanning mine maps into a digital format will provide the access needed by federal and state regulatory officials, mining operators and the public. Due to the thousands of mining maps in existence, this effort may take years and will only be successful with the cooperation and financial backing of the federal government.

I would further note that increased federal funding is needed to improve safety training for miners as well as technical training for the Bureau of Deep Mine Safety.

As you know, Dave Hess, my Secretary of Environmental Protection is here and will delve into some of the specifics of what his department is doing in this regard.

Thank you Mr. Chairman and I am happy to answer any questions you may have.

Senator SPECTER. Thank you very much, Governor Schweiker. We will reserve the questions until we hear from Mr. Hess.

**STATEMENT OF DAVID E. HESS, DIRECTOR, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Senator SPECTER. David Hess was confirmed by the Senate of Pennsylvania as Director of the State Department of Environmental Protection (DEP) on May 21 of last year. He previously served as deputy director of DEP and executive director of the Senate Environmental Resources and Energy Committee. He received a bachelor's from Shippensburg and a master's degree from the University of Illinois.

Mr. Hess, our practice in the subcommittee, both here and in Washington, is 5 minutes on the opening. To the extent witnesses can keep within that time, we would appreciate it. All written statements will be made a part of the record. We look forward to your testimony.

Mr. HESS. Senator Specter, thank you very much for the opportunity to testify, and we have submitted a written statement.

I really appreciate the opportunity and your work in trying to get to the bottom of Quecreek and to help State and Federal agencies

respond to accidents like this and prevent them in the future. Right now, as Governor Schweiker said, there are several different investigations going on of this particular accident. Investigations by MSHA, Mine Safety Health Administration and DEP are designed to determine whether there have been any violations of law or requirements. If laws and safety rules are violated, Governor Schweiker has directed us to impose the maximum penalties and sanctions possible against those responsible as a deterrent to future accidents.

If DEP's own requirements need to be changed, they're going to be changed, because nothing is more important than the safety of the miners. We anticipate that our accident report, at least the draft, will be available at the beginning of November in time for the Governor's special commission to review as part of its activities.

There's also investigation going on by Attorney General Mike Fisher at the request of the Somerset District Attorney and as the Governor mentioned the special commission is looking at the broader issue of how to locate mine voids.

The commission's very first action was to go to Quecreek for an underground visit to the site of the breakthrough and extend an invitation to those individuals directly affected, the nine rescued miners sitting behind us, to present their perspectives on the accident.

I would like to elaborate on two points that the Governor raised in his testimony. One is on the rescue and the successful efforts there, and the second one, preventing accidents like this from happening in the future.

The Quecreek Mine response was the largest mine rescue mobilized in Pennsylvania in over 25 years and it was truly a team effort. It required a coordinated response from everyone involved, the miners themselves, State, Federal, county and local government, local emergency and fire rescue resources and expertise and equipment from private industry.

The success of the Quecreek rescue was no accident. It was built on advanced planning by the mine operator and rescue team, safety training and practice that in some cases started years before the accident.

Four key factors were critical to the success of the rescue teams. Specific mine safety and communications plans for each mine that involved training and safety requirements for miners and up-to-date mine maps showing where the mine was operating at the time, regular safety training for the miners themselves, regular mine training for the mine State and Federal rescue and safety teams, and expertise and equipment provided by the special medical rescue team, the so-called SMRT Team.

Pennsylvania is also one of the few States that requires a series of formal certifications for mine workers before they enter or operate certain equipment in a mine to make sure they are aware of safety requirements.

Each year mine operators and State and Federal rescue teams hold training exercises to put their knowledge and skills to the test. Ironically, just a few weeks before the Quecreek accident, State and Federal officials held one of their regular tabletop exercises to test for rescue and response procedures.

There is a tremendous pride in what these teams do because they know the life of a fellow miner is dependent on how well they do a job. The rescue itself was directed by a small group of individuals from DEP, MSHA, the SMRT Team and the coal company at the incident command center, they developed the strategies and directed the resources for the rescue effort.

Regular and frequent reports to the families of the miners first, before the media, was an ironclad rule established by Governor Schweiker and should be part of any future rescue efforts. Regular briefings of the media to give accurate accounts of rescue efforts was also an important part of our response and in some cases helped us get resources like large pumps that became part of the rescue effort.

Governor Schweiker's personal involvement in the rescue effort, by authorizing special resources and giving straight talk to the families of the miners, was another element critical to this successful rescue.

The techniques used in the rescue have literally helped rewrite the book on how rescues like this were done. At the same time we all know because of our experience at Quecreek we can do things better and faster, if we have a next time.

We can't rely on maps alone to keep miners safe, we need layers of protection, better mine maps, better mine designs and better mining techniques in the mines to achieve the only goal we have in this program, which is protecting the lives of mine workers. That starts with the mine application, the design of the mine and in this case we know that something went wrong, because the mine map that we had on our files did not show the correct information on where the voids were.

However, a later map that was found, that was turned in by the daughter of an inspector for the old Department of Mines and Mineral Industries, did show that more mining was done in the Saxman Mine than was initially reported. Again, the investigations will get to the bottom of those issues.

#### PREPARED STATEMENT

Governor Schweiker's direction to us is clear. Our investigations are to go where the information leads us to assure the safety of the thousands of men and women in Pennsylvania who work in our mines every day.

I would be happy to answer any questions that you might have. [The statement follows:]

#### PREPARED STATEMENT OF DAVID E. HESS

Senator Specter I want to thank you for this opportunity to join Governor Schweiker in presenting testimony today. The Department of Environmental Protection greatly appreciates your willingness to take on the issue of how to prevent another Quecreek Mine accident in the future using the lessons we learned in Somerset County.

In addition to the review by this Subcommittee, there are now four separate investigations being conducted of the accident and the general issue of mining close to mine voids. These investigations will result in assessing legal responsibility for the accident and making recommendations on how to prevent an accident like this in the future.

Two investigations by executive agencies—the federal Mine Safety and Health Administration (MSHA) and the DEP's Bureau of Deep Mine Safety—will look in de-

tail at the causes of the accident from the time Quecreek Mining first applied for a permit until the water broke through from the flooded Saxman Mine and the miners were rescued. These investigations will seek to determine if any laws were violated or if there were faults in the permitting process or safety procedures by the holder of the mine permit, the mine operator or in DEP.

If laws and safety rules were violated, the Governor has directed us to impose the maximum penalties and sanctions possible against those responsible as a deterrent to future accidents. If DEP's own procedures need to be changed, we will change them because nothing is more important than miner safety.

These investigations involve extensive, individual interviews with each of the miners, company officials and engineers for both Quecreek and Saxman mines, rescuers and DEP and MSHA staff past and present and extensive searches of mine records for both mines. We anticipate our draft report on the accident will be completed by the beginning of November and be available for public review at that time.

At the request of Somerset County District Attorney Jerry Spangler, Attorney General Mike Fisher began an investigation of the accident in August to determine if there are any criminal law violations surrounding the accident.

The fourth review is being conducted by the Governor's Special Commission on Abandoned Mine Voids and Mine Safety which is looking at the broader issue of how to locate and safely avoid water and other hazards presented by mining into abandoned voids.

The Commission's very first action was to go to Quecreek for an underground visit to the site of the breakthrough and extend an invitation to the individuals most directly affected—the nine rescued miners—to present their perspective on the accident.

The Commission has already finished two of its three public hearings and is due to report its findings to the Governor by November 15.

I would like to elaborate on two key points from Gov. Schweiker's comments: why the rescue was a success and the steps already being taken to prevent an accident like this from happening in the future.

#### THE RESCUE

The Quecreek mine response was the largest mine rescue mobilized in Pennsylvania in over 25 years and was truly a team effort. It required a coordinated response from everyone involved—the miners themselves, state, federal, county and local governments, local emergency and fire rescue resources and expertise and equipment from private industry.

The success of the Quecreek Mine Rescue was no accident, it was built on advanced planning by the mine operator and rescue teams, safety training and practice that in some cases started years before the accident. Four key factors were critical to the success of the rescue team—

- Specific mine safety and communications plans for each mine;
- Regular safety training of miners;
- Training mine, state and federal rescue and safety teams; and
- Expertise and equipment supplied by the Special Medical Rescue Team.

Each mine is required to have a safety and communications plan that anticipates potential mine hazards and provides miners the training to prevent and survive these hazards. Part of the safety and communications planning is a requirement to have continuously up-to-date maps of mined areas so we know where miners are working.

Pennsylvania is one of only a few states that require a series of formal certifications for mine workers before they can enter or operate certain equipment in a mine to make sure they are aware of safety and other procedures.

The rescued miners have said the safety training they received helped them in several ways, first to warn the other miners to leave the rapidly flooding mine, how to share resources and protect themselves underground and to understand what rescuers above ground would be doing to rescue them. Training includes live action sessions, workshops and the computer based Mine Emergency Response Interactive Training Simulation known as MERITS.

Each year mine operators, state and federal rescue and safety teams hold training exercises to put their knowledge and skills to the test. Ironically, just a few weeks before the Quecreek accident, state and federal officials held one of their regular "table top" exercises to test rescue and response procedures.

Every year there is also a state and national competition of mine rescue teams to see who's the best. There is tremendous pride in what these teams do because they know the life of a fellow miner is dependent on how well they do their job.

The expertise provided by the Special Medical Rescue Team was critical in this rescue because of the cold, wet and high air pressure conditions surrounding the miners. Pennsylvania started the SMRT Team in 1982 to develop not only the knowledge, but also the special equipment needed for these kinds of rescues.

But it was the coordinated training and practices that helped us deal rapidly with issues as they, surfaced because key players knew their roles.

The rescue itself was directed by a small group of individuals from DEP, MSHA, the SMRT Team and the coal company at the incident command center. They developed the strategies and directed the resources for the rescue effort.

Regular and frequent reports to the families of the miners first, before the media, was an ironclad rule established by Governor Schweiker, and should be part of any future rescue efforts. Regular briefings of the media to give accurate accounts of rescue efforts was also an important part of our response and in some cases helped us get resources, like huge pumps, that became part of the rescue effort.

Governor Schweiker's personal involvement in the rescue effort by authorizing special resources and giving "straight talk" to the families of the miners, was another element, critical to this successful rescue.

The techniques used in this rescue have literally helped rewrite the book on how rescues like this are done.

At the same time we all know, because of our experience at Quecreek, we can do things better and faster, if we have a next time.

#### PREVENTING FUTURE ACCIDENTS

We can't rely on maps alone to keep miners safe: We need layers of protection—better mine maps, better mine designs and better mining techniques in the mines—to achieve the only goal we have in this program—protecting the lives of mine workers.

Hazards associated with abandoned water filled mines are not new in Pennsylvania or anywhere else. In fact Pennsylvania mining law since the late 1800s had a requirement to look ahead of where mining was occurring to find voids. The 1961 state mine safety law put in a more specific requirement to drill ahead once mining got within 200 feet of where they think a mine void exists.

When we get an application for an underground coal mine, the operator must submit 23 different application modules that cover topics such as: ownership and compliance information, hydrologic information, erosion and sedimentation control, reclamation plans, details of adjacent mines and extensive mapping requirements for existing and proposed mining activity. Any mining maps submitted to DEP must contain the seal of a registered professional engineer attesting to their accuracy.

During the permit review we look carefully at maps of the planned area of mining and for adjacent mines at least 1,000 feet away from the new mine. DEP and the federal Office of Surface Mining have repositories of thousands of old mining maps that are supposed to show the location of old mine workings. However, many maps are still in the possession of educational institutions, consultants and private collections since there is no legal requirement for copies of all maps like this to be turned over to the state.

We also solicit comments from over 14 agencies Pennsylvania Fish and Game Commissions, Bureau of Historic Preservation, PENNDOT, U.S. Army Corp of Engineers and municipal officials. Testimony of citizens at public meetings or hearings is also important. Ultimately, a permit application is reviewed by our engineers, hydrogeologists, mining specialists and compliance specialists to make sure we have the most accurate information possible before any decisions are made.

In the case of the Quecreek Mining permit, it appears part of a more recent map of the adjacent Saxman Mine found by investigators shows clearly that more coal was removed at the point of break through than was shown on the official mine maps submitted by the Quecreek Mine and that DEP had on file for the mine.

The more recent map was found at the Windber Coal Heritage Museum among papers donated to the Museum by the daughter of a now deceased former inspector for the old state Department of Mines and Minerals who inspected the Saxman Mine in the early 1960s.

By law all bituminous mine operators have to submit final maps of their underground coal mine workings under the seal of a registered professional engineer or surveyor before they cease operations. And all mine inspectors are required to turn over any files or maps they have in their possession when they retire. Obviously in this case something went wrong and we will know more when our investigation is complete.

In addition to maps, the Governor's Special Commission is now reviewing several promising new technologies that will help us address the question of finding mine

voids so we don't have to rely on old maps. Everything from using robots to map underground mine voids, to special forward looking geophysical sensors to pick up underground features and new ground imaging techniques are being considered.

But finding where we think the voids are will only be part of the solution and only one layer of protection.

In August, Governor Schweiker directed DEP to have coal operators more than double this warning distance to 500 feet as an added precaution before the formal investigations make their recommendations. Nineteen bituminous and twelve anthracite mine operators have been complying with this requirement. DEP's Bureau of Deep Mine Safety also sent special advisories to all deep coal mine operators requiring them to review their mining plans and maps as another interim step.

Again, we believe the investigations now underway will help us develop the new mining techniques we can apply to making mines even safer and provide another layer of protection.

Governor Schweiker's direction to us is clear—our investigations are to go wherever the information leads us to assure the safety of the thousands of men and women in Pennsylvania who work in our mines every day.

For more information on the Quecreek Mine Rescue, visit [www.dep.statepa.us \(directLINK "Quecreek"\)](http://www.dep.statepa.us/directLINK/Quecreek).

Senator SPECTER. Thank you very much, Mr. Hess. Governor Schweiker, you made the comment about digitizing the thousands of mine maps and there may be a need for some Federal funding. Could you elaborate on just what you have in mind on that item?

Governor SCHWEIKER. Well, it potentially and likely is a complicated process. It involves labor and hours of labor as well as, you know, the fancy technology processes that are now available in the world of information technology for it to be complete, ultimately to be helpful to operators and miners and Government.

The term, you know, is digitizing, and in and of itself represents a complicated step, but it can be done, but it's going to require some expense. Our estimates, and it's a wind chill figure, Senator, that can perhaps go higher and maybe would go lower, but we suspect it could be as much as \$3½ million.

As we contemplate, and this is to the heart of your question, as we contemplate how we could finance that, and certainly the Commonwealth, here in Pennsylvania, is going to help to some extent. But I'm told that within the Department of Interior in the Federal budget is a sum of money relevant to reclamations of mines. Perhaps with a little research, and I certainly know that both you and your staff are savvy folks, maybe there is an opportunity to identify and access some of that funding, and together we would have the prospect of financing this important step of creating dependable maps that can be quickly accessed through modern means.

Senator SPECTER. Governor Schweiker, the Federal Government stands ready to be of assistance to you. Congressman Murtha had taken the lead on inserting \$2 million on the current Appropriations Bill to assist on the Quecreek matter.

We have increased funding for MSHA from \$191 million in 1993 to approximately \$261 million this year, substantially in excess of the inflation rate. And coal mining safety and health has also been increased. So Congressman Murtha who is on Appropriations on the House side and I on the Senate side are ready, willing and able to be of assistance to you.

Mr. Hess, you made a comment about what Attorney General Fisher is doing on the grand jury investigation and a spokesman for the Attorney General, Sean Connolly, is quoted as saying, "We will follow the evidence wherever it leads, if our investigators un-

cover criminal wrong doing, we will hold those individuals responsible.”

There has been a report, albeit a preliminary report, that the company did not have adequate maps, which I think is probably fairly evident, and the critical question that arises is, what efforts the company made to have accurate maps, and was there any element of deliberateness in misleading the miners as to what those risks were?

Mr. HESS. In terms of the Attorney General’s investigation, he’s doing, they have an environmental crimes unit and they’re doing that investigation with that particular unit at this point from my understanding.

On the map issue, one of the things that our investigation and MSHA is getting to the bottom to is what maps were there, what maps were part of the permit process at the time the permit was originally issued to the Quecreek Mine. There was an additional map as a result of the joint investigation we’ve been doing, found at the Windber Museum, that was not turned in apparently by the inspector of the Saxman Mine in the 1960s. We’re developing and nailing down the specific timeliness.

Senator SPECTER. There was a map from the 1960s which was not turned in?

Mr. HESS. That is correct.

Senator SPECTER. Who failed to turn it in?

Mr. HESS. We’re nailing that down, but it appears that the inspector, who is now deceased, had that more recent map as part of his papers, and those papers were donated to the Windber Museum.

Senator SPECTER. We’re going to hear from Mr. David Rebeck, president of the Black Wolf Coal Company, later today. But what was the obligation of the coal company to have accurate maps?

Mr. HESS. The coal company is required to identify any abandoned mines whether they’re filled with water or not within 1,000 feet of where they plan to put their new mine. That map containing information on where the old mines are and where they want to put the new mine must be something that has a seal from a registered professional engineer on it indicating, and by that seal saying that that information was accurate.

Senator SPECTER. Was the information accurate?

Mr. HESS. Obviously the information was not accurate, because the miners thought they were at least 300 feet away from the water-filled mine void; they obviously were right next to it.

Senator SPECTER. Should not Black Wolf Coal Company have done more to ascertain the accuracy of those maps?

Mr. HESS. The Black Wolf Coal Company is the contract miner for the Quecreek Mine Company, Quecreek holds the actual permit, so there is actually several different entities involved in this particular operation.

Senator SPECTER. Black Wolf is the mining company?

Mr. HESS. Is the contract mine company, they do the actual mining.

Senator SPECTER. What is the legal obligation of a contract mining company to ascertain the accuracy of the maps?

Mr. HESS. The original permit and the accuracy of the maps would have been the responsibility of Quecreek Mining because they are the ones that provided the information to our agency to get the original permit. There obviously is a responsibility on Black Wolf and the Quecreek Mining Company to assure the safety of the miners and follow through with all the safety requirements.

Senator SPECTER. Well, I can see the obligation of Quecreek, the owners of the mines as you articulated, but you say the Black Wolf Coal Company has a responsibility as well to be sure that the mines are accurate?

Mr. HESS. They have a responsibility in their specific mining plans, how they go about mining the particular seam of coal they're in, to comply with all the safety requirements. One of the things that, you had mentioned this in the introduction, one of the things that the investigation was looking at was what were the warning signs that were in the mine before that breakthrough occurred and were they heeded, did people pay attention to those warning signs.

Senator SPECTER. What were those warning signs?

Mr. HESS. The warning signs would have been any indication of water coming through from say, an unknown location more than usual.

Senator SPECTER. There were plenty of indications of that, weren't there?

Mr. HESS. There were some indications. Again the investigation will nail down specifically, based on interviews with the miners, interviews with the coal company, the power inspector, what those indications were, where they looked at those, where water was coming in and should they have reacted differently.

Senator SPECTER. Was the fact that water was coming in communicated to the company?

Mr. HESS. Again, based on the information from the miners, that information was communicated to the company. Again, our detailed investigation will nail down that precise sequence of events, and that will be ready at the end of this month.

Senator SPECTER. Was that information from the miners which went to Black Coal also communicated to Quecreek?

Mr. HESS. I cannot answer that question.

Senator SPECTER. Who can?

Mr. HESS. Again, part of the investigation that our staff is doing with MSHA will nail down the precise sequence of events and that report will be out the end of this month, the beginning—

Senator SPECTER. You have interviewed the miners who passed that information on to the coal mining company, haven't you?

Mr. HESS. Yes, our staff and my Safety and Health Administration.

Senator SPECTER. What did they tell you, did they tell you that they notified Quecreek as well as Black?

Mr. HESS. My understanding is, and again, they did notify the Black Wolf Coal Company. I don't know at this point without conferring with staff whether there was any other communications.

Senator SPECTER. Well, would you please confirm with your staff and let the subcommittee know?

Mr. HESS. I would be happy to do that. And again, all those details will be in our draft report at the end of this month.

Senator SPECTER. Mr. Hess, the reports are that your regulators approved the original permit; is that so?

Mr. HESS. That is correct.

Senator SPECTER. What is involved in the approval of the original permit by DER?

Mr. HESS. When the, an application comes in, it has at least 23 different sections, everything from who the mining company is and what their past compliance record is to the map that I mentioned that shows where old mining has occurred near or under the new mine, where they want to mine as far as the new, new operation, and also other background information on where ground water is, geology and so forth.

All that comes in, that is, goes through an extensive review process that often takes more than a year to look at and verify things like the map information to the best of our ability, and also asked the public for comments, asked local government for comments, and other agencies as well. It's a fairly extensive review process.

Senator SPECTER. When you talk about an extensive review process from your department for the approval of original permits, do you take a look at the issue of mapping? You have the Saxman Mine adjacent and it is a common practice, we are told, to have an adjacent owner encroach upon underground mines and nobody can find out about it. They take away the coal, it doesn't belong to them, and it impacts on the safety of the adjoining territory.

So my question to you is what did your department do about trying to ascertain the accuracy of the maps?

Mr. HESS. Well, mining next to old mines is nothing new in Pennsylvania, we have a 125 year history of mining.

Senator SPECTER. So you're on notice that that could be a problem?

Mr. HESS. Exactly. As the Governor had mentioned, we have mining laws that go back many, many years to address that particular issue. Because we know there is not only a hazard with water, but we know that there is a hazard with bad air and other conditions that could affect the safety of the miners.

What we do typically in a case like this is go back and verify to the best of our ability from our archives of over 10,000 mining maps that we have and from other sources the veracity of the information. Did, the registered professional engineer or surveyor who put that information on that map, did that person do that accurately? That's a key consideration. Because obviously, we don't want a repeat of what happened here.

The record in this regard has been fairly good, but one is too many, and that's why through the Governor's special commission, we want to identify new techniques. Because as I mentioned, this is an issue where we want layers of protection, not just one map. For example, the special commission has already identified technology that could be put on mining machines that looks forward of where they are mining without drilling to identify voids. These are the kinds of layers of protection that we need.

Senator SPECTER. Mr. Hess, is it adequate to authenticate the maps when there is reason to believe that the adjacent owner may have moved beyond the adjacent owner's property and gone into the adjacent property so that the map would be misleading?

Mr. HESS. The assumption in these cases, because there are a lot of old mine workings, is that you want the best information, the hardest information possible on where those adjacent mines are and where those voids are. We don't start with the assumption that some of these maps are valid on their face, we do detective work to the best of our ability.

Obviously in this case, from where the preliminary investigation shows, a more recent map that was held by the mine inspector, and who is unfortunately now deceased, had more information on it. Had we had that map, obviously things would be different at this point.

Senator SPECTER. Well, it seems to me that when you have an approval of a permit and you know that the practice is for adjacent property owners to encroach, that the maps would not be accurate, but there is an obligation to go beyond and to ascertain what those facts are. Especially in a context where you have evidence of leakage which is transmitted to Black Wolf Coal Company; do you agree?

Mr. HESS. And that's part of the layers of protection.

Senator SPECTER. Do you agree?

Mr. HESS. I agree, because that is part of the layers of protection that I was speaking to. You don't just rely on the map. This problem is going to be solved by a couple different things, including looking for those warning signs, new technology as you're mining that looks ahead, and other steps that are going to assure the safety of the miners.

Senator SPECTER. Are you familiar with the technology which is being developed by Carnegie Mellon? After this incident I visited Carnegie Mellon and they have a radar gun which can go into the mines and flush out where the boundaries really are.

Governor Schweiker, you're nodding in the affirmative, do you care to respond to that?

Governor SCHWEIKER. I'm certainly not someone who is deeply schooled in the elements of that technology. It certainly is relevant, I don't think the conclusion has been drawn that that will, that it would be a great help given the unique condition, the existing cavern below in Quecreek. It certainly is fascinating, but I think they've got quite a distance to travel before it's going to be genuinely helpful.

Senator SPECTER. Governor Schweiker, I think you're right about that, but as you noted, it's a start. Mr. Hess, to what extent has your department received that Carnegie Mellon technology?

Mr. HESS. The Carnegie Mellon technology, as the Governor said, I think it is promising, it is a robotic technology that would send a robot into certain areas.

I think after they have talked with our staff, there are safety requirements and other things that need to be made, but there are also other technologies that have come to light because of the Governor's special commission that would actually put a geophysical sensor on the front of a piece of mine, the continuous mining equipment that is frequently used in room-and-pillar miners to help locate voids ahead of the mine.

Again, I think these are promising things and I think the Commission is going to be very helpful in identifying which ones may have promise and which ones need further development.

Senator SPECTER. Is there any technology you're looking at beyond that which is suggested by Carnegie Mellon?

Mr. HESS. Yes, in fact of the Governor's Commission at their hearing in, in anthracite country just 1 week ago heard from this additional developer of that piece of equipment that is put right on the mine equipment itself.

We have quite, we have had quite a few contacts directly that we referred to the Commission on these new different technologies, including other technologies, imaging technologies where you can locate voids from the surface.

Again, many of them show promise and that's something that the special commission is helping us sort through.

Senator SPECTER. Mr. Hess, beyond the issue of permitting, your department also conducts inspections. What inspections have been conducted of this Quecreek Mine?

Mr. HESS. The Quecreek Mine was on, in fact our regular inspection schedule, we at least get there monthly for inspections.

Senator SPECTER. When had you been there immediately prior to July 24?

Mr. HESS. I do not have the specific date, but it was just, I believe within the last, within a few weeks before that.

Senator SPECTER. What did the inspection show?

Mr. HESS. Again, I don't have the inspection report in front of me, we'd be happy to get that to you.

Senator SPECTER. Why don't you have the inspection report? That is obviously a pertinent matter for this hearing.

Mr. HESS. We can certainly provide that for you. The history of the Quecreek Mine has been that it has been a safe mine, it has been operated safely. They have had a couple of typical kinds of violations in terms of minor roof falls and some other things that happened in a mine of that sort. Characteristically, though, in terms of this mine it has been a relatively safe mine.

Senator SPECTER. Thank you very much, Governor. Thank you very much, Mr. Hess. We would appreciate it if you would provide us with the prior inspection. We would like to know on the prior inspection whether any of the miners were interviewed about water leakage and about any of these safety factors, and we would also like the specifics on what the miners had said to Black Wolf, to Quecreek with respect to the notice which they had specifically about these problems.

Mr. HESS. We will also provide the Committee with our draft full report as well.

Senator SPECTER. When can we get that?

Mr. HESS. It should be available as I mentioned—

Governor SCHWEIKER. Later, November.

Mr. HESS. The first week in November.

Senator SPECTER. Again, Governor, congratulations on the vigil. Governor SCHWEIKER. Well, I thank you for that remark.

Senator SPECTER. It was very reassuring for people around Pennsylvania, including Arlen Specter, and I think people around the world.

Governor SCHWEIKER. We did talk, and I remember your supportive remarks and the attempt at making contact because it was a busy time for all us.

Senator SPECTER. I called you, I didn't want to bother you but I thought there was something more that you could relay, but it was reassuring. The Governor is the man to be on the scene.

Governor SCHWEIKER. Senator, I can tell you that I'm often asked about that decision, and I don't think any of us, whether we hold office and have rank or may be an observer, that one would visit 200 family members in that volunteer fire company hall as I did, as Dave and I both did when I first got there, and would not depart, knowing that we just witnessed high anxiety, as you might expect, and just the tremendous feeling of pressure and urgency, that you would not depart.

The folks behind me, who are dear people, and of course an entire region that ultimately came to know some time after the weekend, I don't think we knew it at the time, that it would become an international story that no one with any compassion or concern would have departed, especially if he had an opportunity to effect a complete rescue.

As I said before that, you know, they needed to know that their Governor was going to stick it out and to that end we did stick it out, and I thank the Good Lord in that, the remarkable ingenuity and labor of so many people in helping us complete the rescuing.

As I tried to make clear in my remarks, Senator, you know, the miners themselves, let's not forget there were nine additional men who had gotten out, was because of Dennis Hall's phone call where he said the water is coming, get out. They are able to fight through the onrushing water to get out. But the nine down below, I suspect in my life I will never again meet more determined people with a remarkable reservoir of perseverance. I mean they are just, you would want your kids to meet them as I did. For all those reasons we prevailed.

Senator SPECTER. The symbolism of your presence was very important. President Bush of course came to talk to the miners in early August.

On a somewhat lighter note on a very, very heavy subject, but for the historical record, when did you change your shirt?

Governor SCHWEIKER. I didn't think that was going to come up here.

Senator SPECTER. You're under an obligation to answer that.

Governor SCHWEIKER. I should tell you, Senator, and certainly I know this is an important and serious gathering of information to be arranged and discovered, that my wife did call me on that historic Saturday early in the morning and I had only gotten about two hours sleep at that point and she knew I was going to go off quickly and early that morning. She called, and I said thanks for calling, it was about 5:00 in the morning. She said, you know, people are saying that you all are doing a good job. And I said, well, thank you. She goes, she went on to say, but they're also saying you're wearing the same thing every day, are you going to be changing your shirt sometime soon? So in that regard I did go out and buy another shirt.

But anyway, it was a remarkable experience for all and a soul-changing experience for all. To that end, I think folks who had their soul affected are greatly appreciative of your inquiry here and helping us as advocates for them in getting to the bottom of it, so to speak. Thank you.

Senator SPECTER. Thank you very much, Governor Schweiker. Thank you, Mr. Hess.

**STATEMENT OF DAVID D. LAURISKI, ASSISTANT SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR**

Senator SPECTER. Our next Witness is Mr. David Lauriski, confirmed by the U.S. Senate as the Seventh Assistant Secretary of Labor for Mine Safety and Health on May 9th, 2001. Mr. Lauriski was the General Manager of Energy West Mining Company, served as chairman of the Utah Board of Oil, Gas and Mining, was a board member of the Utah Mining Association, served as chairman of the Coal Mine Safety Committee and the Chairman of the Safety Commission for the Utah Coal Operators. A certified mine safety professional, he attended the Utah State University and the College of Eastern Utah.

Welcome, we look forward to your testimony.

Mr. LAURISKI. Good morning, Mr. Chairman. I'm pleased to appear before you today to discuss the work of the Mine Safety and Health Administration to promote miner safety and health. I have a written statement and request that it be included in the record.

It's a great pleasure to be near the site of the recent Quecreek Mine in the company of some of our distinguished partners in that rescue, and in particular Governor Mark Schweiker. Our cooperative effort there showed what we can accomplish when we worked together. This rescue was one of our proudest accomplishments but one that could not have been successful without that cooperative effort.

We're now investigating the Quecreek Mine and working with the Pennsylvania Bureau of Deep Mine Safety. MSHA investigators have examined the mine, selected records and interviewed witnesses and we're now developing a complete picture of what happened. When they reach their conclusion we will publish a full report, of which I will provide you a copy.

Meanwhile, we are already taking steps to prevent similar accidents. We have conducted a risk assessment at mines across this country to determine the potential for a similar breakthrough, and we're working closely with mine operators on the precautions they need to take to prevent a similar occurrence.

We have a task force reviewing the availability, accuracy and quality of old mine maps and next week we will hold a technical symposium in Charleston, West Virginia on methods to accurately identify the extent and perimeter of coal mining operations.

At Quecreek the whole community worked as a team. After Quecreek, MSHA must devote equal dedication and teamwork for the prevention of accidents that cause death, injury or illness. That is our mission, a mission prescribed by the Mine Safety and Health Act of 1977.

The same team of MSHA professionals who gave their best to save the miners at Quecreek, also work every day with hundreds

of other safety and health specialists to prevent accidents among the Nation's 350,000 miners at some 14,000 mines.

The mining industry and MSHA can look back on a record of tremendous advances in safety and health; however, beginning in the mid 1990s, safety improvements reached a plateau. This accords with the law of diminishing returns. From its creation MSHA has focused mainly on enforcement to create and maintain a safe and healthy physical environment, and this undeniably has achieved tremendous results.

At some point, however, it has become more difficult to achieve significant improvements simply through concentrating on the same thing, enforcement. No one is satisfied that we have done all that we can do. Doing more of the same, operating under old assumptions will not necessarily bring further improvements to get us to the next level of safety performance.

We need to maintain safety and maintain enforcement, but it is clear that we need to supplement it with other approaches as well. The Mine Act provides us with a broad range of tools along with enforcement to improve health and safety in mines. We need a balanced approach, what I call the MSHA Triangle of Success. The three sides of that triangle are enforcement, education and training, and technical support, all of which include the component of compliance assistance. All three are necessary for further progress.

I have said over and over: On my watch there will be no less enforcement, I have kept that pledge. In the Nation's coal mines, the completion rate for mandatory inspection has remained constant as with previous years. In 2001 we spent more inspection hours per coal mine than ever before. Also in 2001 MSHA issued more citations and orders than in the years before.

We have seen a long-term decline of significant and substantial violations at mines. Some have interpreted this as a sign of lax enforcement. I would like to deal with that right now.

Significant and substantial violations are those with reasonable likelihood to produce a serious injury or illness. As the mining industry's nonfatal days loss incidence rates decreased, the percent of these types of violations decreased in parallel; that is exactly what we would and should expect. Many mine operators have corrected the most serious hazards, this is reflected in the lower injury rate.

What we have here is further evidence that the Mine Act is working, but we also see the plateau that I have discussed. Again, it shows that we need a new approach, a balanced approach.

In applying the MSHA Triangle of Success, we're also responding to a critical need for compliance assistance. Most mine operators want to have safe and healthful work places and want to comply, but some need help due to lack of resources and due to the volume and complexity of these Mine Act regulations.

We need to recognize this, recognize their need for assistance and offer the help they need. For instance, our safety, health and compliance specialists now work with mine operators and miners to identify system weaknesses that may lead to accidents. And we are providing more user-friendly training materials and more on-site training. We opened a new Office of Small Mine Safety. We are

making new training materials on our web site available in Spanish, and we use data to focus our efforts.

This year the majority of fatal accidents occurring in the metal and nonmetal sectors have occurred during maintenance, repair and construction activity. We are now conducting an outreach program to help operators and miners prevent these accidents.

#### PREPARED STATEMENT

We're starting to see results, Senator. Despite some setbacks last year, the mining industry is in its safest year on record. We continue to strengthen our work force through hiring, through training and more effective management of resources. We expect even greater progress in the months and years to come.

Thank you, Mr. Chairman, that concludes my remarks and I'm happy to answer any questions.

[The statement follows:]

#### PREPARED STATEMENT OF DAVID D. LAURISKI

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss the ongoing efforts of the Mine Safety and Health Administration (MSHA) to promote miners' safety and health. It is especially gratifying to be here in Johnstown, near the site of the recent rescue of nine miners at the Quecreek mine. It is a pleasure to be in the company of our distinguished partners in that effort—Governor Schweiker and Mr. Hess. Another of our partners, Mr. Rebeck, will appear on the next panel.

I have spent virtually all of my life and career associated with the mining industry and I can tell you that I never before experienced the range of emotion that came with that event. I was concerned about the welfare of the trapped miners. I was prayerful that we could reach them and confident that we would. I was elated when we heard the miners' voices and knew they were safe. I was proud of the level of expertise shown by MSHA's safety and health professionals and the teamwork they exhibited. I was honored that we were part of a team that included the Commonwealth of Pennsylvania, local governments, the mine operator, miners and the many volunteers who gave their time and effort to rescue the trapped miners. And I will never be able to express the emotion I felt when the ninth miner arrived safely at the surface. As all of us worked through the days and nights in the drizzling rain, we never lost hope.

Those who participated on the team at Quecreek were people who had a stake in the mission of our agency—to protect the health and safety of the Nation's more than 350,000 miners working at approximately 14,000 mining operations. Our stakeholders include miners, mine operators, labor organizations, industry organizations, equipment manufacturers, State agencies and others. As at Quecreek, we must all work as a team, as partners, to identify the causes of accidents and to take corrective action.

#### QUECREEK NO. 1 MINE

The Quecreek No. 1 Mine, operated by Black Wolf Coal Company, began production in March 2001. On July 24, 2002, at 9:40 p.m., officials at the Quecreek No. 1 mine notified MSHA that water was rushing into the 1 left section and that 9 miners were unaccounted for. MSHA staff immediately issued an order under Section 103(k) of the Federal Mine Safety and Health Act of 1977 (Mine Act) to ensure the safety of the miners. When MSHA issues such an order, the mine operator is required to obtain MSHA approval, in cooperation with the appropriate State representatives, for any plan to rescue or recover miners or to return the mine to normal operations. Three MSHA officials from the field office here in Johnstown, along with Commonwealth of Pennsylvania staff, arrived at the mine about 10:45 p.m. MSHA technical support staff arrived at about 1:00 a.m.

In the course of the next three days, some 50 MSHA employees directly participated in the rescue, with many more working behind the scene. Our Mine Emergency Operations staff arrived bringing the MSHA Command Center. This is a bus-type vehicle that serves as a temporary on-site MSHA headquarters. It is equipped with several types of communication equipment, a conference area, and normal of-

office equipment (fax and copy machines, etc). During a mine emergency, the Command Center is staffed around the clock by appropriate enforcement and technical personnel. MSHA employees worked with the State and the company to approve rescue plans. We used a seismic detection system to help detect the pounding signals produced by the trapped miners. And we called in mine rescue teams to enter the mine in the event it was necessary.

A drill rig was set up to drill a 6½ inch borehole to be used in an attempt to establish communication with the miners. Starting in the early morning hours of July 25th, the drilling progressed until 5:06 a.m. when the 6½ inch borehole broke through into the mine in the 1 left section. We were elated to hear tapping on the drill steel from underground. Later that morning, nine taps were again heard from underground and we were hopeful that the tapping meant all nine miners were alive. Throughout the rest of that day and the next day, pumps were put in place to pump water out of the mine. A large drill rig arrived on site to begin a large-diameter borehole that could be used as an escape shaft. At 10:16 p.m. on July 27, the escape drill hole broke through into the 1 left section of the mine. A communication system was lowered into the mine and we learned that all 9 miners were alive and in reasonable condition. Food and water were then lowered using the MSHA rescue capsule. I am sure most of you have seen pictures of the rescue capsule and know what it looks like. It was lowered by a crane and had a TV camera mounted on the bottom to provide continuous video of the borehole. Thirty years ago, a similar capsule was used to rescue two miners from a silver mine fire in Idaho. The present capsule was constructed after that. For 30 years, MSHA has maintained the capsule as part of our mine emergency equipment. We began to bring the miners up, one at a time, in the rescue capsule. At 2:45 a.m. on July 28, we pulled the last miner through the rescue shaft.

#### MAPS OF ABANDONED MINES

While our investigation of this accident is ongoing, I can draw no final conclusions about the cause. However, there have been questions about the accuracy of the map of the abandoned Saxman mine, adjacent to the Quecreek Mine, on which the mine operator, Black Wolf, relied. The Federal Coal Mine Health and Safety Act of 1969 contained the first Federal requirement that a mine operator which permanently closes or abandons a coal mine must file with MSHA a certified up-to-date copy of the mine map. This requirement was carried over to the 1977 Mine Act and remains today. Some States have similar requirements that predate the 1969 Act and my colleagues can explain the Pennsylvania requirements. After receiving the final map, MSHA evaluates it to assure the map's depiction of elevations and closed-end developments of mine workings are accurate. MSHA retains the map at the district office and sends a copy of the map to the Office of Surface Mining of the U.S. Department of Interior. The Saxman mine, adjacent to Quecreek Mine, was abandoned prior to the 1969 Coal Act and, therefore, MSHA had no copy of their final map.

#### MAPS FOR NEW MINES

MSHA requires that all new mines submit a mine ventilation map for approval before beginning operations. The map must be drawn or certified by a registered engineer or surveyor. The map must show all known mine workings that are located in the same coalbed within 1,000 feet of existing or projected workings, and the locations of all known mine workings underlying and overlying the seam to be mined, noting the distance between the workings. The map must also show the dip of the coalbed to allow for proper evaluation of mine drainage. When an advancing working place approaches within 200 feet of any mine workings of an adjacent mine located in the same coalbed, MSHA requires that the operator drill boreholes into and in advance of the working face. The 200-foot requirement provides a margin of safety to detect mine voids not shown on maps. Black Wolf Coal Company fulfilled its obligation to submit this map at the time of start-up. The map on the day of the accident did not indicate that mine workings at the Quecreek mine were within this 200-foot zone. We are examining Quecreek Mine records and maps as part of our investigation. You may be aware that our investigators located at a local museum what appears to be a portion of an old map of the Saxman Mine. The map differs from the map of Saxman Mine held by Black Wolf. Our investigators are studying this map and comparing it to the actual workings.

#### INUNDATIONS

MSHA is addressing the issue of inundations from abandoned mines. We have conducted a risk assessment of mines throughout the country to determine the potential for similar breakthroughs. We immediately issued an order to our field staff

to focus on mines with a potential for breakthrough and to work with individual mine operators to ensure that necessary steps are taken to protect against these types of incidents. We have established a task force of MSHA personnel who are working with other interested parties to review the availability, accuracy and quality of old mine maps. Next week we are sponsoring a national symposium on Geotechnical Methods for Mine Mapping Verification. We will gather miners, mine operators, academia, and State and Federal personnel to discuss the most current technology and safe work practices to avoid the hazards associated with abandoned mines and inaccurate mine maps. Geotechnical equipment companies will display the latest technology at the symposium. We are hoping that, by working together, we can identify technology that could be useful. In any case, old maps, many inaccurate, are what the industry has to work with to identify abandoned mines. We will soon have a Public Service Announcement asking that people turn in any old mine maps they might have. We will also review MSHA safety standards and practices to identify any appropriate changes.

There is another aspect of the problem of abandoned mines I would like to address. Every year, dozens of people are injured or killed while exploring or playing on mine property. There are over 14,000 active mine sites and there may be as many as 500,000 abandoned mines in the Nation. Last year, at least 31 children and adults died in recreational accidents on mine property. These deaths were the result of drownings, falls down abandoned mine shafts, and overturned ATV equipment. Hazards in underground abandoned mines include deep vertical shafts, horizontal openings supported by rotting timbers, unstable rock formations, lethal concentrations of deadly gases, water, and the presence of unused or misfired explosives. Both children and adults like to explore the tunnels and shafts, unaware of the inherent hazards. MSHA coordinates a national public awareness campaign to warn the public about the dangers of exploring and playing on mine property. More than 70 Federal and state agencies, private organizations, businesses and individuals have become active partners in the campaign. Over a 2-week period each Spring, we deliver safety talks in schools throughout the country to educate children about the importance of steering clear of these sites. I am proud that we have this partnership program and know that we are saving children's lives.

#### JIM WALTER RESOURCES NO. 5 MINE

Just ten months before the Quecreek accident, explosions at Jim Walter Resources Number 5 underground coal mine in Alabama killed 13 miners and injured 3 others. This tragic event touched the mining community deeply and continues to resonate throughout the mining industry. We are close to completing our investigation of that accident and writing the final report. Our investigation team will identify any and all facts that will assist us in preventing this type of disaster from occurring in the future. If appropriate, we will take enforcement action to address any deficiencies found during the investigation. Some stakeholders expressed concerns about MSHA practices at that mine prior to the accident. As a result of that concern, I have assigned an internal review team to investigate the quality of our management processes and procedures, including enforcement activities at the mine and the MSHA district in which it is located. The internal review, like the accident investigation, is continuing. I can assure you that any deficiencies identified will be fully addressed and corrected. Because of the ongoing investigation and review, however, I am not at liberty to discuss the particulars of that accident.

#### BALANCED APPROACH

There have been tremendous advances in safety and health in the mining industry over the past 30 years. However, beginning in the mid-1990's, statistics show that continued improvement reached a plateau and we have seen no further significant reduction in nonfatal accident rates. I met with a significant number of our stakeholders to discuss this and to hear their concerns and views on how we can make mining safer. My staff met with hundreds more stakeholders. During these meetings, we heard concerns about MSHA's one-dimensional approach: The Agency has historically emphasized the enforcement mechanism embodied in the Act, focusing on physical conditions in the workplace. The Act, however, provides us with a broad range of tools, such as education and training—compliance assistance—and technical support, in addition to enforcement. I believe the increased use of these additional tools will take us from the current plateau to the next level of improved safety performance. But let me be clear about one thing: Enforcement will continue to be a key component of our efforts and we will not lessen those efforts, as some have suggested.

While the mining industry has increased productivity and improved technology, the Agency has not significantly changed its business strategy since enactment of the Mine Act in 1977. Following our stakeholder meetings, we devised a management plan that will meet the challenges of the 21st Century and help move the mining industry to a new level of safety and health. The plan focuses on more collaboration with stakeholders, assistance to the industry in preventing accidents and illnesses, and improvements in our internal practices to enhance mine safety and health performance. I took this plan back to our stakeholders with the challenge for them to work with us to get to the next level of safety. And I asked for their commitment to work collectively with us to reduce accidents and illnesses. To this, they have agreed.

#### ENFORCEMENT

MSHA continues to actively enforce the Act. Last year, we completed 98 per cent of the mandatory four inspections per year at each underground coal mine and two inspections per year at each surface coal mine. But because some mines are open only part of the year, or because mines close before the end of the year, we will never reach 100 per cent statistically, though we still will have met our obligation. Over the years, the coal industry has contracted; the number of mines has significantly decreased. While coal production increased to a record level in 2001, overall coal consumption declined by 2 percent. The additional production was used to replenish depleted stockpiles that resulted from 2 years of declining coal production during which coal consumption had increased.

MSHA must adjust its resources to reflect this decrease in the number of coal mines. In fiscal year 2002, MSHA began to "right-size" its workforce to respond to the decline. The budget for fiscal year 2003 provides for us to continue adjusting to the reduced number of coal mines, yet provides us with sufficient resources to continue to meet our inspection obligations.

While the number of coal mines has decreased, there has been an upsurge in activity in the metal and nonmetal mining industry, especially in the crushed stone and sand and gravel sectors that supply the construction industry. There appear to be a number of reasons for this increase. For instance, the Transportation Equity Act provided funding for a significant number of new highway construction projects. Reduced interest rates have put home ownership within the reach of many citizens who otherwise would not have been able to afford to own their own home. Housing starts are up to meet this demand. These factors and others have resulted in the number of metal and nonmetal mines and miners steadily increasing over the past several years to meet the demand for construction materials and other products. In response to this increase, over time, we have been increasing the number of staff assigned to the metal and nonmetal program.

We recognize that we have had less success in completing the mandatory number of inspections in this industry than in the coal industry. Not only has there been an increase in the number of mines, the increase has been mostly in the aggregate industry, which has always been seasonal in nature. Completing mandatory inspections at seasonal mines is difficult. For example, a rock crushing operation may open to build a portion of a road.

The operation would then be counted as a mine and we would schedule an inspection. However, when we arrive to make the inspection, that portion of the road may have been completed and the operation shut down. On paper, we have failed to conduct a mandatory inspection. In spite of the problem with seasonal mines, we hope to improve the inspection completion rate in fiscal year 2003. The budget requests increasing the number of FTE assigned to the metal and nonmetal program.

In response to stakeholder comments, we have been conducting pro-active inspections. We have developed mine profiles that highlight the problem areas of any given mine. Our safety, health and compliance specialists concentrate on those areas or activities that are most likely to cause injuries or create health problems. We have trained these specialists to focus on overall safety and health matters and to identify system weaknesses that may lead to accidents. These weaknesses may involve violations of existing regulations or factors not covered by regulations.

We are making progress. Calendar year 2001 was our safest year in history. We had a record-low number of fatalities in the mining industry. For the coal program, although the number of fatalities has increased in recent years, we remain convinced that as our initiatives are fully implemented, substantial improvements will be achieved. In fact, as of today, the calendar year-to-date number of coal fatalities is significantly below the levels of the previous three years.

We have analyzed the causes of this year's fatal accidents in the metal and nonmetal industry and have found that 59 per cent are a result of maintenance, re-

pair or construction activities. As a result, we are currently conducting a two-week industry outreach program to specifically focus attention on the hazards present in these activities and to assist mine operators in implementing preventive practices. MSHA safety, health and compliance specialists are visiting mines to provide mining personnel with information on fatal accidents, best practices, and hazard awareness and recognition.

Earlier, I mentioned the plateau we reached in the mid-1990's when the nonfatal days lost injury rate (or NFDL) flattened. At about the same time, we saw a reduction in the number of significant and substantial (or S&S) violations at mines. S&S violations are those that have a reasonable likelihood to produce a serious injury or illness. As the NFDL injury rate decreased, the percentage of S&S violations decreased at about the same rate. That is exactly what we would expect to occur. Many mine operators have corrected the most serious hazards and this is reflected in the lower injury rate. This reflects the basic philosophy of the Mine Act—the declining number of serious violations correlates with the rate of decline in serious injury rates.

As I said earlier, we are concerned about this flattening of the injury and fatal incidence rates. However, the traditional enforcement scheme is no longer bringing a reduction in these rates. We must do more. The agency must utilize additional approaches. We must use our other tools. To do otherwise would be to accept the status quo; and accepting the status quo is NOT something we should be willing to do.

#### TRAINING AND EDUCATION

As I stated earlier, we must use all the tools of the Mine Act to bring further reductions in accidents and illnesses. Our stakeholders, from the individual miner at the mine to the CEO of a corporate mine operator, have told us that training for the mining industry is crucial to the success of our program to reduce accidents and illnesses. We are responding to their call for more user-friendly training materials for mine operators and miners. They also called for more on-site training where safe practices related to specific problems can be demonstrated. Our safety, health and compliance specialists are now providing such training when they uncover system deficiencies at mines. We are also exploring innovative approaches, such as web-based learning, DVDs, and the use of simulation devices. We continue to analyze accidents to determine patterns or trends so we can identify problems, find solutions, and create awareness through training and education.

Secretary Chao recently announced a major new compliance assistance initiative to help employers better understand and meet their responsibilities to protect workers. We know that the vast majority of mine operators want to comply but are often hampered by the volume and complexity of Mine Act regulations. If we are to get to the next level of safety, we need to recognize industry's cry for assistance and give them the help they need, not just to comply with regulations, but to have a broader view of how to identify and prevent hazards, and to provide miners with safe and healthful workplaces. We need partnerships where we share abilities and information. For example, we are developing materials on Best Practices culled from industry, labor, academia, and MSHA experience for use at all mines. Most importantly, we must assist mines with poor performance or limited resources.

In support of the Administration's initiative, we in MSHA have developed a Compliance Assistance Plan that sets out the specific steps we are taking to improve our outreach to mine operators and miners. Compliance assistance can mean different things to different people. We use the term broadly to identify concepts and accident prevention activities such as education and training, accident and violation analysis, hazard identification, root cause analysis, technical support, and access to information. Access to information means the information is readable, easily understood, and written in plain language the reader understands—in other words, user-friendly. Because we know that there are increasing numbers of Spanish-speaking workers in the mining industry, we have translated numerous best practices cards, student and instructor guides, entire training programs, and handout materials. All of the materials on our website are now available in Spanish.

Our web site, [www.msha.gov](http://www.msha.gov), provides access to a multitude of resources for compliance assistance. In 2001, there were over 55 million "hits" on the MSHA web site, excluding those by agency employees. On the web site, we have posted a list of the 20 standards most often cited by major commodity and mining type and are beginning to post information on safe practices for each of those. On the web site, miners and mine operators can find safety tips, accident investigation reports, hazard alerts and bulletins, and single source pages as well as access to MSHA's Data Retrieval System.

Compliance assistance is always needed when new regulations are issued. I believe that the assistance should be rendered before the regulation becomes effective so that everyone is aware of their obligations and knows how to comply ahead of time. Our new final rule on hazard communication took effect on September 23, 2002, for mines with more than five miners. Prior to that date, we held 15 National Roll-Out Meetings and about 100 supplemental local meetings to give each of those mine operators the opportunity to learn how to comply with the rule. The rule will become effective on March 21, 2003, for mines with five or fewer miners. We are preparing to provide on-site compliance assistance to those mines before that date.

#### SMALL MINES

Operators of small mines face unique challenges in protecting their workers. In metal and nonmetal mining, about one-half of all mines employ five or fewer miners. In the coal industry, nearly one-fourth employ five or fewer miners. Small mines typically have fewer resources to devote to safety and health and often lack the expertise to implement accident prevention programs. Small mines have higher fatality rates. In calendar year 2000, mines with five or fewer employees had a fatal incidence rate four times greater than the rate at operations employing 20 or more. To bring small mines to the next level of safety, we are developing a Small Mine Initiative. We have established an Office of Small Mine Health and Safety in our Directorate of Educational Policy and Development.

The Office will coordinate a national program to assure compliance at small mines and to give compliance assistance. The staff will determine the special needs of small mine operators and help develop programs to address those needs.

#### REGULATIONS

When developing regulations, we assess the impact of the regulations on all mines, and on small operators in particular. We will review existing regulations to determine applicability to current mining practices and to identify those that create an undue burden on small mine operators. Let me give you an example of what I mean.

I spoke with a mine operator in the bluestone industry who was the only miner at his operation located in the back yard of his home. MSHA's rules require that each mine have a stretcher to be used to transport injured miners. He asked me why he had to have a stretcher if there was no one to carry him out on the stretcher. My answer to him was that this was a prime example of a well-intentioned rule that was not flexible and which needs to be reassessed to allow alternate methods of complying with the intent of the rule, while maintaining equal safety and health protections. This is but one example where a one-size rule does not fit all.

MSHA has published several important final rules recently. The hazard communication rule, an information and training rule, will reduce injuries and illnesses related to chemicals in the mining industry by increasing miners' and mine operators' awareness of chemical hazards. The high-voltage longwall rule allows a mine to use current technology without the need to petition the Agency for a modification of a standard. This rule recognizes that advanced technology, already in widespread use in the mining industry, can be used safely when it meets stringent requirements.

We are working on rules that will address the continued risks associated with exposure to respirable coal mine dust. These rules would provide for verification of a mine operator's dust control plan to ensure it works effectively under typical mining conditions. Additionally, MSHA is considering a proposed rule that would allow the measurements of respirable coal dust taken during a single shift, in lieu of several shifts, to be used to determine the atmospheric condition to which a miner is exposed. These two rules would work in tandem to control coal mine respirable dust levels in mines and reduce miners' exposure to this extreme health hazard.

The Office of the Inspector General recommended that we take regulatory action on asbestos to address three issues. They recommended that we lower the existing permissible exposure limit for asbestos, change the analytical method we use to quantify and identify fibers in our asbestos samples, and address take-home contamination from asbestos. We issued an Advance Notice of Proposed Rulemaking in March of this year requesting information and data from the public to assist us in our deliberations. We held seven public-meetings on asbestos and solicited written comments. The public comment period closed in July. We are examining all of the testimony and written comments as we move forward in our decision-making process.

In January of 2001, MSHA published a final rule addressing the health hazards to underground metal and nonmetal miners from exposure to diesel particulate matter. The rule requires the use of approved equipment and establishes a concentra-

tion limit for DPM in the mine atmosphere. Some provisions of the rule were challenged in court. We entered settlement negotiations with the parties. I am happy to report that an agreement was reached and the legal challenge has been stayed pending implementation of the agreement. Pursuant to the agreement, MSHA delayed the effective date of one provision and clarified others. The interim concentration limit went into effect as scheduled and MSHA is providing compliance assistance for one year. Also, as part of the settlement agreement, MSHA has published an Advance Notice of Proposed Rulemaking on several provisions.

Another rulemaking currently in process would provide a simplified compliance alternative for conducting methane tests during roof bolting in underground coal mines. The proposed rule is based on a joint recommendation by industry and labor organizations. We think this is an example of stakeholders working together to improve the rulemaking and compliance process.

We have just proposed a rule that would allow us to accept testing and evaluation of certain mine equipment by independent laboratories. We are also working on a proposed rule on the use of belt entry ventilation for coal mines that recognizes that improved technology, such as new atmospheric monitoring systems, may make it possible to safely use this type of ventilation.

These are the rules on which we intend to concentrate our resources. These are our priorities.

#### TECHNICAL SUPPORT

Our technical support staff includes experts on ventilation, roof support, dust control, electricity, ground stability, structural analysis, impoundment stability, mine fires and explosions, and chemical exposure. While mine operators provide rescue teams, MSHA gives technical assistance to the operators during mine emergencies. You saw our technical support people in action during the Quecreek rescue. Many parties drew on their expertise in the decisions on where to locate the miners, where to drill the boreholes, and the many other decisions that were critical during the successful rescue effort. Mine rescue is just one of the many ways we give technical assistance. These same individuals are creating partnerships with other government agencies, equipment manufacturers, mining companies, and trade and labor organizations to more effectively identify and evaluate technological solutions to mining hazards. We are also identifying new technologies to address emerging hazards.

#### CONCLUSION

In conclusion, Mr. Chairman, I am very honored to be able to lead the Mine Safety and Health Administration. MSHA staff care deeply about the safety and health of America's miners. You witnessed this at Quecreek. Our stakeholders also care deeply. No one is satisfied that we have done all we can do to reduce accidents and illnesses. But we have reached a plateau and, according to the Law of Diminishing Returns, doing more of the same, operating under the old assumptions, will not necessarily bring further improvements or get us to the next level of safety. We have examined our way of doing business and devised the new management plan for the Agency that will emphasize enforcement, but will add to it by increasing training and education, compliance assistance, and technical support. I am confident that, working with our stakeholders, we can get to the next level of safety.

Mr. Chairman, that concludes my prepared remarks. I would be happy to respond to your questions.

Senator SPECTER. Thank you very much, Mr. Lauriski. I will begin by asking you about the adequacy of the funding for MSHA. The appropriation in 1993 was \$191 million, and in 2002 \$253 million and the Senate has put in its Appropriation Bill which Senator Harkin and I took the lead on, almost \$262 million; is that adequate?

Mr. LAURISKI. Well, I think it is, Senator, I think it is adequate in the sense of how you apply those resources. What we need to consider is where we put our best efforts to get an adequate return on an investment. One of the things we talked about since I've been here is making sure that we allocate our resources in areas where we make a difference, and that's in the field.

Senator SPECTER. The MSHA overseers signed off on the ventilation and site safety plans, when did that occur, Mr. Lauriski?

Mr. LAURISKI. Well that, the ventilation plan would be every 36 months, I assume we're talking about Quecreek now?

Senator SPECTER. I'm talking about Black Wolf, Quecreek, I'm talking about this incident.

Mr. LAURISKI. There would have been an initial filing with the Agency to look at their ventilation and roof control plans along with other plans that are required by regulations.

Senator SPECTER. You are talking about the general rule, but how about specifically, do you know?

Mr. LAURISKI. Specifically, it would have happened on several occasions.

Senator SPECTER. It would have happened? I want to know if it did happen?

Mr. LAURISKI. Yes, sir, it happened.

Senator SPECTER. Do you have those records?

Mr. LAURISKI. Yes, we have those records.

Senator SPECTER. What date was that inspection carried out?

Mr. LAURISKI. The last time we were at the mine was just a week before the accident, but the plans you're talking about would have been every 6 months from the beginning of the inception of the mine.

Senator SPECTER. I was about to come to the inspection, but I wanted to start with the overseers signing off on ventilation and site safety plans; when did that occur?

Mr. LAURISKI. Sir, I'll be happy to get that for you, there is an approved plan that would be in our office that would show that.

Senator SPECTER. Mr. Lauriski, why didn't you bring that with you to this hearing?

Mr. LAURISKI. Chairman, I didn't know that would be something you would want to know about, but I will certainly have that available.

Senator SPECTER. Of course, the subcommittee is interested to know what the safety plan was, that is the purpose of the hearing.

Mr. LAURISKI. Yes, sir, I understand that, sir. There are several plans that are required by the coal company to be filed with the agency, including the ventilation plan.

Senator SPECTER. Do you know what the safety plan said?

Mr. LAURISKI. It would say what—

Senator SPECTER. No, I don't want to know what it would say, I want to know if you know what it did say?

Mr. LAURISKI. No, I do not.

Senator SPECTER. We're going to have to have another hearing.

Mr. LAURISKI. I do know that it would say what the minimum requirements of the standards are and what additional standards the company would take in certain instances.

Senator SPECTER. What are the minimum requirements of the standard?

Mr. LAURISKI. In ventilation it would be a minimum requirement to have 12,000 cubic feet of air, for example, at the last open cross-cut. It would be the requirement to have bolting on a spacing pattern, either 4 or 5 feet, the size of the bolts that would go into the roof. There would be training requirements that would be submitted too, the kinds of training that the mine operator had to apply that meet the standard, such as new miner training, annual

retraining, those sorts of things would be in all these plans. There are guidelines that are provided by our standards.

Senator SPECTER. That is the generalization, but as you say, you cannot tell me what happened here?

Mr. LAURISKI. Not specifically.

Senator SPECTER. That's the requirement; you cannot tell me specifically what occurred on this situation?

Mr. LAURISKI. Again, Senator, I'm a little bit confused, because the plans themselves are prescribed by law to be filed, and there are items within the regulations that the operator must submit within that plan that we would then take a look at improving. Included in that would be the amount of air that would be available, the types of bolts that would be used for control of the roof, the kinds of, again, training.

Senator SPECTER. What kind of bolts would be required?

Mr. LAURISKI. The operator could use a bolt that would be adequate to maintain the roof if either through a—

Senator SPECTER. Wait a minute, I know it would be adequate, but what?

Mr. LAURISKI. Probably in this case they used resin bolts.

Senator SPECTER. Mr. Lauriski, it's not adequate, not sufficient for you to tell me probably. I want to know what was done, I want to know what the inspection showed, I want the specifics here. There are a lot of requirements which were not followed, it happens all the time, that is why you have congressional oversight. We need to get down to the specifics as to what happened here.

There are reports here that the bolts were inadequate, there was a thin veneer, inspection was made a week before, what did the inspection show? Have there been any reports of flooding, of water coming in?

Mr. LAURISKI. Those questions I can answer, Senator.

Senator SPECTER. Okay, if you can answer them, fine.

Mr. LAURISKI. I can answer those questions.

Senator SPECTER. The question is, what were the facts as to water coming in?

Mr. LAURISKI. The week before we were there, there was nothing abnormal that our inspector reported seeing; however, the inspector had visited the mine when the mine was getting ready to go under a stream channel. He asked the mine operator to submit a plan for dealing with any water that may come into the mine as a result of crossing under that bed.

Senator SPECTER. Why did he ask the owner to submit a plan for water; was there some indication that there was a water problem?

Mr. LAURISKI. There was an indication that they were going to cross under a bed of water that was in a stream, a creek, if you will, so that there was an assurance that the mine operator was taking adequate precautions to deal with crossing under that bed during the mining process.

But with respect to what they physically saw at the mine the week before this incident, they saw nothing abnormal, either in the first left section or the second left section. That's the report.

Senator SPECTER. They saw nothing abnormal?

Mr. LAURISKI. Nothing abnormal.

Senator SPECTER. Did you review the report yourself that they concluded there was nothing abnormal?

Mr. LAURISKI. I have spoken with the inspector and I have spoken with the supervisors of the office that offered the reports.

Senator SPECTER. My question was, did you look at the reports themselves?

Mr. LAURISKI. I have not, but that is part of the investigation material that our investigators will gather for this accident.

Senator SPECTER. But we are conducting an investigation here, Mr. Lauriski, that is why we would like to have the firsthand information.

Mr. LAURISKI. Senator, that is being told to me directly by the officials in the district which the mine is located by the inspector himself.

Senator SPECTER. I appreciate that, but hearsay is not as good as seeing the record, and talking about the record is not as good as having the subcommittee look at the record, so would you please provide the record to us?

Mr. LAURISKI. Absolutely.

Senator SPECTER. Had you had any indications of the mapping being inadequate?

Mr. LAURISKI. At the time of the accident, no, we did not. Subsequent to the accident during our investigation, we did uncover at a museum, the Windber Museum, near here, a map that appears to be, a portion of the map that shows something different than what the mine operator's map showed.

Senator SPECTER. Even in addition to the map, as we covered with Mr. Hess, it is a common occurrence for adjacent owners to move in or take coal from an adjacent property. So whatever the mine map showed, wouldn't necessarily be adequate. To what extent does your Department as MSHA take into account the encroachment of adjacent coal miners?

Mr. LAURISKI. We have very similar regulations to those of Pennsylvania. Mine operators are required, when they file their map, to include indications of approaching any old abandoned mine within 1,000 feet. That would be part of their mine mapping requirements, so they would have to show those boundaries. As they mine toward those boundaries, if they approach within 200 feet of those boundaries, they have to begin a very rigorous drilling process ahead, not only straight ahead, but at 45 degree angles across the working areas where they are cutting.

Senator SPECTER. Is that 200 feet requirement adequate?

Mr. LAURISKI. Yes, that is one of the things we are looking at, Senator. To make sure, we are conducting rigorous investigation to see, is that something that we need to look at, is it adequate or is it not adequate? It has been in place since 1969. I believe that the founders of the Mine Act recognized the seriousness of the problem, there are literally thousands of these abandoned mines across this country.

Senator SPECTER. That's an act of Congress?

Mr. LAURISKI. An act of Congress.

Senator SPECTER. We can change it.

Mr. LAURISKI. I understand.

Senator SPECTER. But we are not, we would like to have your judgement on it.

Mr. LAURISKI. We are going to be looking very closely at that.

Senator SPECTER. We may become experts or we may not, depending on what we find, but you are an expert now. What is your conclusion?

Mr. LAURISKI. My conclusion is not there yet. Until I see the investigation report in terms of what we found and what all of the facts were in this case, I have not reached that point yet.

We have an issue here where we have a map that appears to be different from the map that the mine operator was using to show those boundaries. That map appears to be consistent with what we saw in the mine itself where the breakthrough occurred. We need to understand what if any precautions were being taken, what the actual distances were between what the mine map showed from the operator versus what the old Saxman Mine showed. Then we have already undertaken a risk assessment of all these processes across this country. And once we have the ability to see this investigation, we'll take a very close look at our regulations to determine whether or not they are adequate. If they are not adequate, Senator, we'll change the rules.

Senator SPECTER. Do you need an act of Congress to do that?

Mr. LAURISKI. No, we do not. We can do that from a regular perspective.

Senator SPECTER. When do you expect to formulate your judgement? You have got a lot of mining going on every day.

Mr. LAURISKI. We hope to have a report within the next month to 2 months. They are very close right now.

Senator SPECTER. Are there Federal criminal statutes which apply to this kind of a situation?

Mr. LAURISKI. Certainly they could. If we found that there was reckless disregard or there was knowing conduct, that could be something that could be referred to—

Senator SPECTER. Or false maps?

Mr. LAURISKI. Or false maps.

Senator SPECTER. Or failing to take precautions knowing that there was water leakage?

Mr. LAURISKI. Anything where we could determine that there was a failure on the part of an operator, a knowing failure or a reckless disregard, could in fact put the case toward criminal prosecution.

Senator SPECTER. Have you notified the U.S. Attorney with jurisdiction of this matter to take a look?

Mr. LAURISKI. Not at this point, not until we finish our investigation. Our investigation will determine whether there were infractions to the regulations and it will determine the level of those, the negligence on the part of the mine operator. If any of those infractions meet the standard for notification, we will then do that.

Senator SPECTER. Well, shouldn't the U.S. Attorney be apprised of an early date to take whatever steps the U.S. Attorney thinks appropriate by way of empaneling a grand jury?

I think you ought to notify—never mind, Mr. Lauriski, I'll notify the U.S. Attorney. I think the U.S. Attorney ought to be in on this

matter. The U.S. Attorney has a lot of authority in convening a grand jury, on subpoenaing the witnesses, on taking testimony.

Well, okay, Mr. Lauriski, you're not prepared to make any recommendations today. How soon do you expect to have those recommendations, you say a month or two?

Mr. LAURISKI. We hope that we'll have a completed report within 1 month or 2.

Senator SPECTER. On behalf of the subcommittee, may I request that you do that as early as possible?

Mr. LAURISKI. Yes, sir.

Senator SPECTER. Let us know. If you find the need for regulations, how long does it take you to promulgate regulations? There are a lot of procedural steps you have to go through, that is a time-consuming process, even after you come to the conclusion that you want these regulations.

Mr. LAURISKI. That is correct.

Senator SPECTER. How long will it take?

Mr. LAURISKI. Normally at the outside, if you bypass the advance notice process, we could be talking 12 to 18 months to put a rule through. If there were evidence that the situation was grave enough, we could enact an emergency temporary standard, but that's something we will take a very close look at, that could move this process faster.

Senator SPECTER. Mr. Lauriski, I hope it's possible on your schedule for you to stay for the conclusion of the hearing. We hope to hear from some of the miners yet today who may be in a position to shed some light on some of the questions you are considering; can you stay?

Mr. LAURISKI. Sure.

Senator SPECTER. Thank you. We now move to panel III. Mr. Ed Yankovich, Joseph Main, Howard Messer, George Ellis, David Rebuck.

**STATEMENT OF EDWARD YANKOVICH, JR., PRESIDENT, DISTRICT 2,  
UNITED MINE WORKERS OF AMERICA**

Senator SPECTER. Our first witness will be Mr. Ed Yankovich, President of District 2 of the United Mine Workers of America since 1989. Mr. Yankovich represents nearly 25,000 active and retired miners in Pennsylvania, New York, and Western Maryland. He previously served as a member of the Labor Counsel Advisory Committee for the AFL-CIO. Graduate of the California University of Pennsylvania. Mr. Yankovich, thank you for joining us today.

Mr. YANKOVICH. Thank you, Senator.

Senator SPECTER. Any prepared statement will be made a part of the permanent record and we look forward to your testimony, sir.

Mr. YANKOVICH. I want to begin by thanking Senator Specter for the opportunity to speak before the Subcommittee today on behalf of the United Mine Workers of America.

I would also like to express our heartfelt thanks to the Senator for his long serving commitment to ensuring that proper laws and safeguards established by the Mine Health and Safety Act are enforced protecting miners in this Commonwealth and our entire Nation.

I will not detail the United Mine Worker's position as to the changes that should be considered to the applicable provisions of the Act to prevent potential disasters from occurring similar to this summer's events at Quecreek Mine in Somerset County. Joe Main, who is the Director of Safety for the United Mine Workers of America International Union, will testify in this hearing addressing our position on this matter.

I would like to take time here today to salute the bravery of all 18 miners who escaped a tragic death thanks to the divine intervention of God.

The nine men who were trapped for 77 hours proved to our Nation and the whole world the steadfastness of spirit, the compassion of humanity, and the bonds of brotherhood that miners all over the world possess, in facing the daily dangers of our chosen occupation.

I would hope that the goal of this subcommittee is to bring to light efforts that can be made and provisions that can be established to prevent such an occurrence from ever happening again.

I would also like to add that our concerns over health and safety of our Nation's miners goes beyond Quecreek. The recent mine disaster in Alabama that killed 13 miners, and 3 years of increased coal mining deaths in our Nation's mines, shows there are serious health and safety problems. It also identifies the fact that an increase in the enforcement of the Mine Safety and Health Act is needed.

Many miners, as well as myself, are concerned about the current direction of MSHA. In addition to actions to weaken the enforcement of the Mine Act, there are attempts to cut the Agency's enforcement budget. I urge that your committee seriously examine these concerns.

In conclusion, I'm compelled to commend Senator Specter again. Through his efforts during administrations of both parties, he has been steadfast in demanding that the budget cuts in the funding of MSHA not be permitted. I know that he once again faces this challenge in light of this accident.

#### PREPARED STATEMENT

Safety in our Nation's mines should be the first and foremost focal point given priority consideration by all of our branches of Government. To cut funds and weaken the agency's ability to do so is not acceptable to the United Mine Workers of America, nor should it be to any person who enters our Nation's mines to make a decent and honest living.

Senator SPECTER. Thank you very much, Mr. Yankovich.

Mr. YANKOVICH. You're welcome, sir.

[The statement follows:]

#### PREPARED STATEMENT OF EDWARD D. YANKOVICH, JR.

I want to begin by thanking Senator Specter for the opportunity to speak before this Subcommittee today on behalf of the United Mine Workers of America. I would also like to express our heartfelt thanks to the Senator for his long serving commitment to ensuring that proper laws and safeguards established by the Mine Health and Safety Act are enforced, protecting miners in this Commonwealth and our entire nation. I will not detail the United Mine Workers of America's position, as to the changes that should be considered to the applicable provisions of the Act to pre-

vent potential disasters from occurring, similar to this summer's events at the Queecreek mine in Somerset County.

Joe Main, who is the Director of Safety for the United Mine Workers of America International Union, will testify later in this hearing, addressing our position on this matter. I would like to take time here today to salute the bravery of all 18 miners, who escaped a tragic death, thanks to the divine intervention of God. The nine men who were trapped for 77 hours, proved to our nation and the whole world, the steadfastness of spirit, the compassion of humanity and the bonds of brotherhood that miners all over the world possess, in facing the daily dangers of our chosen occupation. I would hope that the goal of this Subcommittee is to bring to light efforts that can made and provisions that can be established to prevent such an occurrence from ever happening again.

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In conclusion, I am compelled to commend Senator Specter again. Through his efforts during administrations of both parties, he has been steadfast in demanding that budget cuts in the funding of MSHA not be permitted. I know that he once again faces this challenge, in light of this accident. Safety, in our nation's mines, should be the first and foremost focal point, given priority consideration by all of our branches of government. To cut funds weakening the Agency's ability to do so is not acceptable to the United Mine Workers of America, nor should it be to any person who enters our nation's mines to make a decent and honest living.

#### **STATEMENT OF GEORGE ELLIS, PRESIDENT, PENNSYLVANIA COAL ASSOCIATION**

Senator SPECTER. We turn now to Mr. George Ellis, president of the Pennsylvania Coal Miners Association. Prior to taking this position, Mr. Ellis was a member of the Keystone Bituminous Coal Association and the executive director of the Pennsylvania House of Representatives' Mines and Energy Management Committee, and a graduate of King's College in Wilkes-Barre, the heart of coal country.

Welcome, Mr. Ellis, and we look forward to your testimony.

Mr. ELLIS. Thank you, Senator, and good morning. You have my complete testimony so I'll try and summarize what I think the high points are.

One of the things I do want to start off with, though, is the commitment that PCA member companies have to safety is paramount. PCA, PCA members, our coal companies do not play Russian roulette with their workers' safety. The evidence indicates that that is the case. While mining inherently is a dangerous job, our companies' commitment to safety is paramount, among all mining factors.

Both the State and Federal laws have served to focus the attention of industry and miners on the prevention of hazardous conditions that lead to major disasters. One clear purpose of the law was to develop a safety culture within the mining community designed to ensure, not only compliance with standards, but also to emphasize the importance of risk analysis in reducing or minimizing the causes of accidents.

These laws, coupled with Federal and State regulators working in tandem with mine operators and their employees, and the tremendous advances that have been made in mining technology, have unquestionably been effective in reducing the frequency of ac-

cidents and fatalities in Pennsylvania's coal mines. This is evidenced by the trend line illustrated on the attached chart to my testimony.

As Governor Schweiker and Secretary Hess said, both the Lost Time Accident Frequency Rate and the Fatal Accident Frequency Rate have decreased in Pennsylvania over the past decade as overall coal production increased by 25 percent.

While a single fatality is one too many, our commitments to workers' health and safety is equal to any other coal producing State or Nation.

Indeed, prior to Quecreek, Black Wolf's safety lost time advisory, lost time accident frequency rate was zero. It was our understanding that the purpose of this hearing was to discuss mappings and rescue efforts, so I prepared my testimony for that.

I do want to talk about July 24, though, obviously, when nine very brave coal miners became trapped underground at the Quecreek Mine. For the next 78 hours America and the world watched as a team of able rescuers relentlessly struggled to bring these men to the surface, which is certainly a profile in courage and valor and a testament to the skill and determination of both the rescuers and those that they saved.

From the beginning, DEP, MSHA and Black Wolf Company officials emerged as the triumvirate heading the rescue effort. DEP and MSHA, two deeply ingrained safety cultures that at times appeared to be on a collision course, set aside their rivalries, integrated operations at a designated command center and managed and coordinate the response. Together with company officials, they marshaled their considerable skills and resources and collectively evaluated the situation and made the correct decisions that ultimately lead to the rescue of the trapped miners. It was an extraordinarily unified effort that was as remarkable as it was successful.

As you begin to analyze the events that led to the accident, it is important to understand the comprehensive statutory and regulatory requirements already in place governing the mine. Generally speaking, PCA believes that the current State and Federal requirements for the mapping of mines, and for the retention of maps, are adequate. It is the accessibility of old maps that is the problem.

The current standards for mapping abandoned mines appears to be sufficient and the current buffer requirements provide an additional layer of safety to account for potential inaccuracies. What is lacking, though, is a central repository for maps, and the most important recommendation that can be made is for the State or Federal Government to gather all the available maps, plot them on a uniform coordinate system and place them in a computerized central repository that is readily accessible to agencies, operators, employees and the public. On the State level, Representative Bob Bastian moved to introduce legislation this week that will provide \$4 million for this effort.

In addition to approving the collection, storage and archiving of mine maps, we also ask that you consider and address the limited resources available to support mine rescue teams. These are critical responders to mine emergencies and sufficient funding should be allocated to sustain their efforts. In addition, NIOSH should be en-

couraged to continue its research on mine emergencies and development of training materials to address such emergencies.

Finally, there is a significant concern about the prompt payment of vendors who respond to mine emergency situations. While we laud the recent efforts of Congress to include a \$2 million line item in a Defense Appropriation Bill to help defray the rescue cost, we also recommend that you consider establishing a continual fund to ensure timely payment to the vendors who participate in a mine rescue.

Once the arrangements are worked out between the carrier and the company, then the State or Federal Government could collect its money, recover its expenses there.

We also recommend that a centralized database of vendors is developed on both the State and national levels to facilitate rescue efforts.

#### PREPARED STATEMENT

The rest of my testimony, Senator, really highlights, sets out the comprehensive State and Federal regulatory requirements on mapping and submission of maps. I don't know how much more time I would have, but I'd be glad to answer any questions.

[The statement follows:]

#### PREPARED STATEMENT OF GEORGE ELLIS

Good Morning. I am George Ellis, President of the Pennsylvania Coal Association (PCA).

Seated with me is David Rebeck, President of the Black Wolf Coal Company, Joseph Yuhas, counsel for Black Wolf, and R. Henry Moore of Buchanan Ingersoll, P.C., counsel to PCA on mine safety issues. We appreciate this opportunity to provide comments on the Quecreek Mine accident.

PCA is a trade organization representing surface and underground coal operators that produce three-fourths of the bituminous coal annually mined in the Commonwealth and over 90 percent of the coal produced by underground mining methods. In addition, it represents companies whose existence depends in whole or in part on a robust coal industry by providing essential services, ranging from engineering and consulting to financial, insurance and the sale of mining equipment.

The Association's mission is to advance the mining and use of the state's most abundant and economical energy resource in an environmentally responsible manner through sound legislative and regulatory policies and judicial decisions.

Pennsylvania ranks fourth among the states in the annual production of bituminous coal. Last year we mined 85 million tons and directly employed over 8,000 workers. Using conventional multipliers, the Pennsylvania coal industry has a combined direct and indirect economic benefit in excess of \$11 billion.

Over 90 percent of Pennsylvania's coal production is used to generate electricity. Last year, coal accounted for more than half (51 percent) of the electric power generated nationally and 59 percent of the power produced in Pennsylvania.

While coal mining, inherently, is a dangerous job, PCA member companies' commitment to safety is paramount among mining factors. We closely follow the sage maxim that a safe mine is a productive mine and a productive mine is a safe mine.

The state and federal safety laws have played a significant and longstanding role in fostering occupational safety and health in our mines.

These acts have served to focus the attention of industry and miners on the prevention of hazardous conditions that lead to major disasters and loss of life. One clear purpose was to develop a safety "culture" within the mining community designed to ensure not only compliance with regulatory standards relating to the physical conditions of the mine but also to emphasize the importance of risk analysis in reducing or minimizing the "causes" of accidents.

These laws, coupled with federal and state regulators working in tandem with mine operators and their employees and the tremendous advances that have been made in mining technology, have unquestionably been effective in reducing the frequency of accidents and fatalities in the state's coal mines.

This is evidenced by the trendlines illustrated on the attached charts. Both the Lost Time Accident Frequency Rate and the Fatal Accident Frequency Rate have decreased in Pennsylvania over the past decade as overall coal production increased by 25 percent. While a single fatality is one too many, our commitment to workers' health and safety is equal to any other coal producing state or nation.

It is our understanding that, among other things, the purpose of the hearing is to discuss mapping of abandoned mine adjacent to active workings, the coordination of Federal, State and Local rescue efforts following the Quecreek Mine inundation; and the adequacy of Federal funding for the mine-related emergencies. We will address a number of these issues in our testimony.

On July 24th, nine very brave coal miners became trapped underground at the Quecreek Mine in Somerset County. For the next 78 hours, America and the world watched as a team of able rescuers relentlessly struggled to bring these nine men to the surface. This profile in courage and valor was a testament to the skill and determination of both the rescuers and those they saved.

From the beginning, DEP, MSHA and Black Wolf company officials emerged as the triumvirate heading the rescue effort. DEP and MSHA, two deeply ingrained safety cultures that at times appear to be on a collision course, set aside their rivalries and historical turf battles, integrated operations at a designated Command Center (initially near the mine portal then later at the rescue site) to manage and coordinate the response. Together with company officials they marshaled their considerable skills and resources and collectively evaluated the situation then made the correct decisions that ultimately led to the rescue of the trapped miners. It was an extraordinarily unified effort that was as remarkable as it was successful.

As you begin to analyze the events that led to the accident, it is important to understand the comprehensive statutory and regulatory requirements already in place governing mining activities. The following includes a discussion of the current statutory, regulatory and policy guidance requirements relating to mine maps for bituminous underground mines and which regulate mining near adjacent workings, as well as mine permits and planning requirements and rescue and response procedures.

Generally speaking, PCA believes that the current state and federal requirements for the mapping of mines and retention of the maps are adequate, but the accessibility of old maps is the problem. The current standards for mapping abandoned mines appear to be sufficient and the current "buffer" requirements provide an additional layer of safety to account for potential inaccuracies. What is lacking, though, is a central repository for maps; and the most important recommendation that can be made is for the state or federal government to gather all the available maps, plot them on a uniform coordinate system and place them in a computerized central repository that is readily accessible to the agencies, operators, employees and the public.

On the state level, Representative Bob Bastian of Somerset County has proposed legislation that would appropriate \$4 million to DEP for the conversion of some 10,000 underground mine maps to GIS (Geographic Information System) data and images. The funding would include all drilling and geophysical surveying activities necessary to accurately locate the entire extent of mine workings. Sixty-three other State House members have joined Representative Bastian as sponsors of the legislation and the Representative intends to introduce the measure this week.

In addition to improving the collection, storage and archiving of mine maps, we also ask that you consider and address the limited resources available to support mine rescue teams. These are critical responders to mine emergencies and sufficient funding should be allocated to sustain their efforts. In addition, NIOSH should be encouraged to continue their research work on mine emergencies and the development of training materials to address such emergencies.

Finally, there is a significant concern about prompt payment to vendors who respond to mine emergency situations. While we laud the recent efforts of Congress to include a \$2 million line item in a defense appropriations bill to help defray the rescue costs, PCA recommends that the state or federal government establish a continual fund to insure timely payment to the vendors who participate in a mine rescue. Further, PCA recommends that a centralized database of vendors be developed on both the state and national levels to facilitate rescue efforts.

#### PERMIT REQUIREMENTS

##### *Current statutory and regulatory permit requirements for maps*

The Pennsylvania "permit" mapping requirements are set forth in the Bituminous Mine Subsidence and Land Conservation Act ("BMSLCA"), 52 P.S. § 1406.1, et seq. Section 5(a) of the BMSLCA, 52 P.S. § 1406.5(a), imposes a requirement that each

applicant for a subsidence permit, which would include all bituminous underground coal mines, must submit a “map or plan of the scale and in a manner in accordance with rules and regulations of the Department . . . showing the location of the mine or mining operation, the extent to which operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested . . .”

The mapping requirements of Section 5 are implemented by regulations administered by DEP’s McMurray District Mining Office during the permit application process. Specifically the applicant must provide information on: (1) the type of mining, surface or underground; (2) name of mine, permit numbers or other identification; (3) the coal seams or other mineral strata mined; (4) the extent of the coal or other minerals removed; and (5) the location and elevation of impounded water in the mine workings either overlying, below or within the permit area. If this information is not available the applicant shall outline the efforts to obtain it. 25 Pa. Code § 89.141(c)(1)–(5).

The area covered by the above informational/narrative requirement is the “permit area,” which is defined as “The mine and surface areas where underground mining activities occur.” 25 Pa. Code § 89.5. *See also*, definition of “underground mining activities,” which broadly defines such activities. 25 Pa. Code § 89.5.

More importantly, the applicant is required to submit a “general mine map,” which must show, *inter alia*, “the location and extent of known workings of active, inactive or abandoned, underground or surface mines, including identification of the coal seams mined and location of mine openings to the surface within, above and below the proposed permit area and adjacent areas.” 25 Pa. Code § 89.154.

The area covered by this mapping requirement is larger than the area covered by the informational/narrative requirements of § 89.141(c)(1)–(5) because it requests mapping on the permit area and “adjacent areas,” which is defined as “land located outside the permit area, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by this chapter may be adversely impacted by mining and reclamation.” 25 Pa. Code § 89.5.

“The permit application, including all required maps, are generally available for inspection and copying at DEP’s McMurray District Mining Office. 25 Pa. Code § 86.35. In addition, applicants must provide public notice that they have filed an application. 25 Pa. Code § 86.31.”

#### CURRENT STATE GUIDANCE

In addition to the regulations, DEP’s “guidance” on permit applications further refines the informational/mapping requirements relating to adjoining active or inactive mines. The instructions for completing Module 6 of the permit application relating to “environmental resources” provides that the applicant must submit Environmental Resource Maps, which show the area above and adjacent to the mining activity. At a minimum, the map shall include all areas within 1,000 feet beyond the permit boundary unless otherwise directed by the Department. The map must be no smaller than 1”=500’, and be prepared by a registered professional engineer, registered professional land surveyor or a registered professional geologist. The “Module 6.3 Map” must, *inter alia*, outline other active, inactive and abandoned mine workings (surface, auger and underground), above, below or within 1,000 feet laterally of the underground permit area. *See*, § 6.3(e)(7) of Module 6.<sup>1</sup>

In addition, all bituminous underground operators are required to file in the Recorder of Deeds Office of the county where mining will occur, an updated mine map every six months. This map shows the location of adjacent mines in relationship to mining that is projected to occur during the next six months. 25 Pa. Code § 89.145(b).

The information that is submitted on the location of abandoned mine workings is based on the information available to the operator. There are no uniform procedures for obtaining this information and, certainly, no single source. Invariably, operators rely on a variety of sources to obtain old mine maps, including the federal Greentree Repository, DEP’s McMurray and Uniontown offices, universities’ libraries, the county courthouse, the owner of the mineral estate and other coal compa-

<sup>1</sup> It should be noted that some of the mine mapping requirements are “local.” For example, several provisions of the Municipal Code authorize local municipalities to create a Bureau of Mine Inspection and Surface Support, which can request mine maps from mines operating within its boundaries. *See, e.g.*, 53 P.S., Part V, Chapter 81, Article XXII (relating to Third Class Cities) and 53 P.S., Part VI, Chapter 91, Article XI (I) (relating to Boroughs). In addition, there is a separate “mine map” requirement relating to Allegheny County, which requires mine maps to be filed with the County Commissioners. *See* 52 P.S. § 1408 (relating to Counties of the Second Class).

nies. While operator's engineers cannot always "certify" the location of the abandoned workings if the survey data is not available (and those who do certify the maps are attesting to the accuracy of the work they performed), in our experience it is the availability of the final maps of abandoned mines that is the biggest problem not the accuracy of otherwise available maps.<sup>2</sup> In this regard, it is crucial to recognize that ultimately a "good map" of the old Saxman Mine was found. It is not that reliable maps do not exist, it is that there is no surefire central place to obtain them.

In addition to a review of the maps during the permitting process, where there is more of an environmental focus, further reviews confirming the accuracy of the mapping of active workings for subsidence purposes occur at the time of mining and are conducted by state mine inspectors as part of their routine inspections of underground mines. This provides inspectors with another opportunity for validating the accuracy of mine maps.

Please keep in mind as you examine issues relating to the accuracy of active mine mapping or the accuracy of the mapping of mines closed since the early part of this Century, that Pennsylvania operators, since 1911, have been required to prepare a "final" map on each mine closed. (See Section 240 of the Mine Act, 52 P.S. § 701-240, the provisions of which have been in effect since at least 1911.) Thus, there is no need to impose "new" permit mapping requirements. There is, however, a need to make maps easily and readily available.

Finally, current requirements provide that the mine maps prepared as part of the permit application process must be available for public inspection and copying at DEP's McMurray District Office and before an application is filed each operator must publish a "public notice" informing the public that an application has been filed and can be reviewed. 25 Pa. Code §§ 86.31 and 86.35. As noted, at least every six months "updated" mine maps are recorded in the Recorder of Deeds Office. Thus, there is no need to impose "new" permit requirements relating to public access to mine maps.

#### STATE MINE SAFETY PROVISIONS

##### *Current statutory requirements*

In addition to the statutory requirements that are "permit" related, there are additional mapping requirements imposed by the Bituminous Coal Mine Act of 1961 ("BCMA"), 52 P.S. § 701-101, et seq. which are appropriately designed to assure the accuracy of mine maps at the time most crucial to mine safety—when active mining actually approaches adjacent workings. In this regard, PCA submits it is crucial to recognize that requiring maps to be "certified" when a permit is issued, years before mining near adjacent workings will occur, is not the answer. The time to determine if "good" maps exist is at a time appropriately prior to when actual mining will occur, when the goal should be to obtain good, reliable, current information. Reliance should not be placed on "stale" data. These mine safety related mine map requirements include: (i) a requirement that the superintendent of each bituminous coal mine maintain an accurate mine map showing, *inter alia*, the location of adjoining mines, 52 P.S. § 701-235; (ii) a provision authorizing mine inspectors to require accurate mapping of an adjoining mine when the working of another mine are within 1,000 feet of the adjoining mine, 52 P.S. § 701-236; and (iii) a requirement that when a mine has been abandoned for a period of one year a map of the abandoned working be prepared and sent to the BDMS, 52 P.S. § 701-240.

In addition, the general mine map is required to be reviewed every six months. 52 P.S. § 701-238. A true copy of the map is kept at the mine office, typically in the foreman's room, and it is available to the mine inspector and the miners who work in the mine and/or an authorized representative of the miners. 52 P.S. § 701-237.

In addition to being available at the mine, every six months an operator is required to furnish the state inspector responsible for its mine with a copy of the updated map. This map includes projections of anticipated mining for the next six to twelve months, providing the inspector the time to check the maps to ensure no intersection with abandoned mines. 52 P.S. § 701-239. The maps are maintained by the state inspector and there are provisions that address the issue of what happens to the map when the inspector is no longer responsible for the mine. 52 P.S. § 701-

<sup>2</sup>This may not be true in the anthracite portion of Pennsylvania.

239. In practical application, the inspector assigned to a mine will request, and receive, updated maps more often than every six months.<sup>3</sup>

As previously discussed, Section 240 of the BCMA requires an operator to submit a certified map to the Department when a mine has been abandoned for a year or more. 52 P.S. § 701–240. This requirement, along with most other provisions of the BCMA, has been in effect since at least 1911. Prior to the creation of DEP, the maps would have been submitted to the Department of Mines, one of DEP’s predecessor agencies. Section 241 of the BCMA, permits an inspector, if he believes a map is inaccurate, to require a survey of the mine at the operator’s cost. Again, the issue is not whether good maps exist—the issue is developing a system to assure that all available maps are readily accessible to mine operators, their employees and representatives, the State and the public.

In addition to the mapping requirements, Section 224(b) of the BCMA requires underground probe drilling to occur whenever mining is within 200 feet of an adjacent mine. It further requires boreholes to be drilled to a distance of at least 20 feet in advance of the face (as measured at the end of the cut). This last provision has not kept pace with certain contemporary mining practices. For example, a number of mines in Pennsylvania have obtained approval to take “deep cuts” when they are mining with continuous miners. Traditionally 20 foot cuts have been the norm because that is the distance from the operator’s compartment on a continuous miner to the front of the miner. Deep cuts typically exceed the length of the miner and, depending on roof conditions, may result in cuts 40 feet in depth from the last row of permanent roof supports to the face.

When “good maps” are not readily available the answer should not be a requirement for operators to drill holes from the surface in a particular pattern in an attempt to locate adjacent abandoned workings. This procedure is not an effective way of locating abandoned mine workings. It depends on the driller hitting the mined out areas, as opposed to coal pillars, and recognizing them as voids, as well as recognizing that water encountered is, in fact, mine water, rather than an aquifer. In Quecreek’s case, such drilling may have missed the narrow extension from the body of the mine workings that the miners actually encountered.

The State has also granted at least five variances under Section 702 of the BCMA to permit horizontal drilling (Section 702 is the operator’s only mechanism to use an alternative method or technology to a specific requirement of the state’s safety law). This type of drilling is done at the operator’s initiative. Because horizontal drilling may be more effective in certain cases than the type of drilling required by Section 224(b), it is likely that any operator subject to the Section 224(b) requirement who can feasibly conduct such drilling will seek a variance.

However, the 702 process is protracted and extremely cumbersome. To illustrate the time and effort needed to secure a variance under Section 702, I submit for the record, correspondence from one of PCA’s member companies that chronicles the process that it had to follow to receive a variance to permit horizontal drilling. To ease this burdensome requirement and make this provision of the law applicable to contemporary mining technology, PCA has prepared a draft amendment (attached) to Section 224(b) to allow horizontal drilling without going through the Section 702 variance approval process.

#### *State enforcement provisions*

Pennsylvania coal mines are rigorously and frequently scrutinized by State mine inspectors. Although State law requires quarterly inspections of mines that liberate methane, it does not mean an inspector’s presence at the mine is limited to four days a year. Indeed, with the recent consolidation and concentration of the mining industry, there are now fewer underground coal mines than at any point in Pennsylvania’s history. Without a corresponding reduction to the State workforce, this means that many mines have an inspector assigned to them on a full time basis. This results in as many as 150–200 inspection shifts a year from a state mine inspector, not including the number of inspection days that may result from state electrical inspections.

An inspection shift means one inspector at a mine for all or part of a shift. Typically, an inspector spends four to six hours underground in the active mining areas taking methane and gas readings, checking roof conditions and ventilation controls and looking for potential hazards.

<sup>3</sup>Section 239 of the BCMA indicates that the maps will be exchanged between operators of adjacent active mines but requires consent of the operator to permit production of the maps to outside parties. That provision appears to have been superseded by federal requirements about the availability of maps to the public under BMSLCA and the Federal Mine Safety and Health Act of 1977 (“FMSHA”). *See, e.g.*, 30 U.S.C. § 801, 30 C.F.R. § 75.1203.

State mine inspectors are able to keep track of the extent of ongoing mining on a timely basis and to observe the conditions in the active sections. By focusing their attention on areas of active mining, inspectors are able to correlate what they observe in the mine with the continually updated maps, required by the Mine Act to be on file in the mine office, to verify accuracy. Inspectors can (and should) even walk the perimeters of soon to be sealed areas to verify the mapping, and if any inaccuracies are found, they can be immediately corrected.

BDMS is allowed, at the inspector's discretion, to request an updated map from the operator. BDMS' Uniontown office also makes such requests from time to time and maps are then provided.

If a BDMS inspector believes that an operator has not complied with the statutory requirements, he can force compliance. This is normally done through the issuance of "compliance orders" requiring compliance within a specified time period. They also have the authority to issue immediately effective withdrawal orders if they believe mine conditions present so great a hazard that delay in correcting the conditions might cause loss of life or serious personal injury. 52 P.S. §701-121.

The system is in place to assure that accurate maps are prepared. What is needed is a system to cause all available maps to be centrally located and easily accessible.

#### *Post-Quecreek actions by the state*

In the aftermath of the Quecreek accident, DEP took a number of steps to determine if other active underground coal mines, at least in the short-term, are at risk of "breaking through" to abandoned voids.

DEP's McMurray and DMS offices reviewed maps of permitted underground coal mines to determine their accuracy. According to the Department, 34 of the 54 permitted underground coal mines were in some way adjacent to an abandoned working. The maps of these mines were examined to determine if mine pools exist in the abandoned section that could submerge the adjacent mine with water if breached.

The intent was to try to define the universe of mine pools within abandoned mines through an inventory and fixing their exact locations and proximity to active workings.

In addition, DMS sent out an advisory to all underground operators urging them to review their mining plans and maps as a precaution after the Quecreek accident. Referring to Quecreek and the consequences of inaccurate maps of abandoned mine workings, the directive stated that:

"Each mine operator should immediately review their mining plans and assure that the required 'Barrier Pillars' are in place. Any questionable areas need to be identified and appropriate safety precautions implemented. Inspectors with the Bureau of Deep Mine Safety also review plans submitted by any mine operator who has active workings within 1,000 feet of an abandoned mine."

These actions led to the issuance of orders to operators of 19 underground bituminous coal mines to ensure that abandoned adjacent workings are properly identified and defined. This order provides that when mining is within 500 feet of a "charted mine working" (defined as one that is known to exist and which is shown on an existing map) the operator must provide DEP with "credible evidence" of the location of such workings. This requirement, which is not currently applicable industry-wide, is in addition to the mapping requirements imposed by the Mine Act and 25 Pa. Code Chapter 89, as interpreted by DEP's permit module instructions.

The Department and Governor's office view this as an interim step and is looking for guidance on more permanent action from a special panel that the governor convened to review certain aspects of the Quecreek incident.

In addition, MSHA is conducting a national symposium in Charleston, West Virginia on October 29 to discuss application of state-of-the-art technology as a means to help prevent an accident like the one that occurred at Quecreek.

#### MSHA

#### *Applicable MSHA standards*

In addition to the numerous State "permitting" and mine safety related mapping and operational requirements the Federal Mine Safety and Health Administration ("MSHA") also imposes various mapping and operational requirements relative to adjacent workings. 30 C.F.R. §75.1200 requires each operator to maintain a mine map showing all adjacent workings within 1,000 feet and all mines above or below

the mine, as well as water pools above the mine.<sup>4</sup> 30 C.F.R. § 75.1200–1 further requires the Section 75.1200 map to show areas within the mine where water has been dammed or held back within the mine.

30 C.F.R. § 75.1203 requires the operator to make its mine map available to state and federal mine inspectors, miners and their representatives, operators of adjacent coal mines, and persons owning, leasing or residing on the surface of such mines or adjacent surface areas. That map must be updated with temporary notations and is typically posted in the foreman's office at the mine. According to informal MSHA policy, such updating must be done within 24 hours, although in practical effect it occurs after the shift on which the mining occurred. These requirements have been in effect since 1969. Further, 30 C.F.R. § 75.1204 requires the filing of a map when an operator closes a mine or idles it for 90 days. The map is to be filed with the Secretary of Labor, is required to be certified, and be available for public inspection.

In addition 30 C.F.R. § 75.372(b)(3) and (4) require an operator to submit a ventilation map which shows overlying and underlying mine workings and any mine working within 1000 feet. Those maps are required to be updated every 12 months. Although surveys are not conducted, these maps are closely reviewed by MSHA personnel on an on-going basis through inspections specifically intended to verify the accuracy of the maps.

30 C.F.R. § 75.388 requires probe drilling when mining is within 200 feet of any adjacent mine working unless it can be examined. In order to use horizontal drilling under the federal standard, an operator must seek approval from the District Manager. 30 C.F.R. § 75.388(g).

#### *Federal enforcement*

The requirements of the Federal Mine Safety and Health Act of 1977, ("FMSHA"), 30 U.S.C. § 801 et. seq., and the regulations promulgated under it are enforced by regular inspections of Pennsylvania mines. MSHA is required to inspect underground mines in their entirety four times a year. 30 U.S.C. § 813(a). If mines liberate methane, additional spot inspections are required, the number depending on the amount of methane liberated. 30 U.S.C. § 813(i). MSHA also responds to complaints by miners whenever they are made in accordance with Section 103(g) of the federal law or are anonymous "code-a-phone" type complaints. 30 U.S.C. § 813(g).

For larger mines, this means that there is a federal inspector at the mine almost every weekday. The larger mines in Pennsylvania have as many as 500 "inspection days" a year. In 2000, the latest year for which PCA has data from MSHA, two Pennsylvania mines had over 3,500 MSHA on-site inspection hours, four mines had over 3,000 such hours. While the number of mines has declined over the last several years, the number of federal inspectors has remained constant. This has resulted in an increase in the inspector presence at the mines.

These inspectors focus their attention primarily on the active mining areas. For example, spot inspections done every 5 days in some mines are conducted almost exclusively in the areas of active mining. They are readily able to observe mine conditions as mining advances and correlate it to the mine mapping that is done. If this is not the case, it can easily be remedied.

MSHA inspectors also have enforcement authority which they routinely exercise. They can issue citations which carry civil penalties of up to \$55,000 and which require abatement within a specified time. They can issue immediately effective withdrawal orders if abatement is not accomplished within a specified time, if an "imminent danger" exists, if a "pattern of violations" exists, if a miner has not received the required training, or if certain preconditions related to the operator's negligence, known as "unwarrantable failures" exist.

#### TRAINING

The State has no training specific requirements under the BCMA, although it does provide training assistance and oversees certification of mine officials. MSHA, however, has extensive training requirements. It requires 40 hours of training before an underground miner begins work. 30 C.F.R. § 48.5. It requires 8 hours of annual refresher training. 30 C.F.R. § 48.8. It requires "task" training if a miner operates equipment that he has not previously operated or if the new job he is to perform is not part of his regularly assigned duties. 30 C.F.R. § 48.7. The new miner training and annual refresher training include "hands-on" training in the use of self contained self rescuers, training on the mine's escapeways, and barricading. *See*, 30

<sup>4</sup>This provision was contained in the Federal Coal Mine Safety and Health Act of 1969 as well as FMSHA, 30 U.S.C. § 862. No such federal requirement appears to have existed prior to that in the Federal Coal Mine Safety Act of 1952, Public Law 552, Ch. 877.

C.F.R. § 48.5 and § 48.8. Such training also includes many other topics, such as roof control.

Once the State and federal investigations of the Quecreek Mine accident conclude, those lessons learned about mining near impounded water, including an identification of precursory conditions or early warning signs that would indicate potential hazards, should be incorporated in the MSHA required annual refresher training.

With respect to training, PCA urges careful review and restraint. While we recognize that the type of inundation which occurred at Quecreek had very serious consequences, the accident was not the result of a lack of training. A review of accident histories indicates there are other, at least as significant, hazards to miners which result in injuries on a far more frequent basis. PCA members direct their non-mandated training efforts towards avoiding these types of hazards. PCA believes far more significant benefits can be derived by focusing training on the type of injuries that are common to our industry, such as roof falls, strains and sprains. We are not suggesting that training on the issues associated with inundations is unnecessary. On the contrary we recognize the need for such training. However, we believe that such training should be situation-specific and mine-specific. To adopt an across-the-board requirement for additional inundation training would divert training resources from subjects that are of more consequence to the majority of miners.

The Quecreek rescue may also present an opportunity for improvements to emergency response procedures. In this case, the rescue was accomplished as a result of a very prompt response to the breakthrough by the miners underground and by excellent communication and coordination among the agencies and the operator on the surface. We would suggest that this presents several opportunities for sharing what was learned among emergency responders, particularly in emergencies where there are multiple agencies involved.

After other mine emergencies, NIOSH has developed training tools to help in response to future emergencies. For example, they have developed a short training program known as "The Emergency Communication Triangle," to help facilitate communication in an emergency. The Quecreek miners appeared to have utilized such principles especially in their communication to the miners who escaped.

In addition, NIOSH has conducted research on emergency response and management issues by interviewing miners who escaped mine fires and this research has helped the agency prepare additional training tools. In this instance, it might be appropriate and useful for the Bureau to conduct such research with respect to how events evolved underground as well as in the command center. While such research would not be specific to inundation, it would have broad applicability to mine emergencies in general.

#### RESCUE AND RESPONSE PROCEDURES

PCA's members prepare themselves for an emergency in a number of ways. MSHA requires operators to establish mine rescue teams or to enter into arrangements which insure the availability of at least two teams while miners are underground. 30 C.F.R. § 49.2. A number of PCA's members maintain mine rescue teams. Some of PCA's members provide personnel to the state maintained mine rescue team.

The cost of establishing and maintaining a team is significant, about \$250,000 per year. MSHA requires 20 hours of initial training and 40 hours of annual refresher training. Many mines exceed that by a large margin, some mines hold 35-40 practices for their rescue teams each year. For a team of 10 members, this is a significant cost in terms of wages alone, at an average of \$150/miner/shift. Mine rescue equipment costs \$6,000 per apparatus and most of the inventory in Pennsylvania will have to be replaced by 2006 because parts are no longer being made to equip the current apparatus. For an operator that has a 10 member team, that cost alone will be \$60,000.

But such preparation does not end with the establishment and training of mine rescue teams. Many PCA members who maintain teams also participate in mine rescue contests and in mine emergency problems that have been conducted in conjunction with the BDMS and MSHA. These exercises have included mock drills and role-playing, and have proven to be extremely valuable training and evaluation tools.

Unfortunately, this important resource is dwindling at an alarming rate. At an MSHA public meeting at the Beckley Mine Academy in March, it was reported that at the 1985 National Mine Rescue Contest, there were 106 rescue teams, 28 first aid teams and 62 bench participants. At the last National Contest in 2001, there were 38 rescue teams (-64 percent), 15 first aid teams (-46 percent) and 37 bench competitors (-40 percent).

It is PCA's belief that this Commission should recommend that Pennsylvania utilize monies received as state grants from MSHA to subsidize rescue teams both for large and small operators. It already assists small operators in using such grants to obtain mine rescue apparatus. It should also expand the use of such grants to assist in paying the wages of rescue team members as well as the purchase of equipment for both large and small operators.

PCA members also have in place emergency preparedness plans. These plans cover such issues as the responsibilities for notification of appropriate government agencies, mine and corporate officials and emergency services.

The difficulty with the use of such plans is that much of what occurs in the event of a major mine accident such as a fire, or explosion, must be accomplished as the event unfolds. Most of the preplanning that occurs is intended to establish the parameters of notification of management, the agencies, and the miners, recognizing that hard and fast rules cannot be readily applied to every mine-specific situation.

The interaction of the mine personnel with the agency personnel may be determinative of the outcome of an accident. MSHA has the authority to issue orders, known as 103(k) orders, which order withdrawal of miners and essentially control access to the mine for rescue purposes. Because of this authority and because of the need for interaction between state and federal agencies and mine management and the representative of the miners, it is on occasion difficult to have decisions made and executed in the time frames necessary for effective rescue.

#### VENDORS

In every mine emergency, vendors, such as drillers and equipment companies, are asked to respond in an expedited fashion without the luxury of purchase agreements or invoices. In mine emergencies, the operator may have mine emergency insurance but usually it has a large deductible. The mine emergency may destroy an operator's ability to render prompt payment. In some instances, the state or MSHA may have requested the supplies or equipment. All of this may make it difficult to resolve payment issues after the emergency passes. PCA would suggest that the State or Federal government establish an "emergency fund" out of which vendors may be promptly paid while the agencies, the operators and the insurance company resolve payment issues. The state in turn could then seek repayment from the operator or the insurance companies. This would prevent vendors who may be small companies from incurring a huge cost burden which could be an impediment to volunteers.

One area that might assist in an emergency is maintenance by the state of a vendor database. Some operators maintain such a list, but it would be a useful tool in emergencies. MSHA and the National Mining Association are considering developing such a database. Such database would have to include "after hours" contact numbers and be easily accessible and updated regularly. It seems to us it would be appropriate for the state to devote resources to such a database.

#### CONCLUSION

The current mine map requirements imposed on bituminous underground coal operators are adequate. There is not a need for new statutory, regulatory or policy requirements relating to mine maps or permitting. The focus should be on assuring that the existing requirements are met and latest maps of abandoned mines are accessible in a central location.

Similarly, the existing operational requirements relating to mining near "adjacent" mines appear to be adequate. Again the focus should be on assuring that accurate information concerning the location of adjacent workings is available.

It is our recommendation that the following steps be taken:

1. That a central repository be established for mine maps in the Commonwealth consistent with its existing authority.

2. Copies of any and all mine maps of existing mines shall be placed in such repository. The BDMS and DEP would collect in such repository copies of mine maps that have been submitted to DEP or BDMS for mines that have ceased to operate. DEP and BDMS would also obtain from MSHA copies of any and all maps of abandoned mines in the Commonwealth that have been submitted to it. DEP and BDMS will seek out other sources of maps of abandoned mines from existing operators, state mine inspectors, former state mine inspectors, museums, universities' libraries, the former U.S. Bureau of Mines or any other source that might provide information.

3. That such information be placed into a computerized mapping system available to operators and state and federal agencies.

4. That grant money be available to mine operators for establishing, maintaining and training mine rescue teams and for purchasing required equipment.

5. That an emergency fund be established for the purpose of reimbursing vendors who provide services in a mine emergency in a timely fashion.

6. That NIOSH conduct a study of the response underground and at the command center at Quecreek and develop training to assist in miner emergencies.

7. That DEP develop an accessible database of vendors who may be utilized in mine emergencies.

Senator SPECTER. How much more time do you have? The red light has been on for some time, but go ahead.

Mr. ELLIS. I'll take as much as you will give me.

Senator SPECTER. Take as much as you need, Mr. Ellis, these are very important subjects.

Mr. ELLIS. I appreciate it. On the State level there really is two different laws that regulate mining, in general. One is the Bituminous Mine Subsidence Act, the other is the Bituminous Mine Safety Law. The Subsidence Act, and we're just, for this hearing since I thought the purpose was just on addressing maps, and I'm just talking about the mapping the requirements, we must submit a general map that shows the location of the mine for mining operation and the extent to which operations have been completed and the projected operations. Then there, under section five, we also have to designate the location and elevation of impounded water in mine workings, either overlying, below or within the permit area.

Among other things as part of the permit process, applicants are also required to submit a general mine map. This among other things must show the location and extent of known workings of active, inactive or abandoned underground surfaced mines.

It further requires mapping on the permit areas in the adjacent areas, again, which I define as land located outside the permit areas, so it would take care of the adjacent areas.

There is also a guidance on how we go about doing this, and at a minimum, our map has to include all areas within 1,000 feet beyond the permanent boundaries, and our Module 6.3 of the permit application has to outline—

Senator SPECTER. You think the map ought to go 1,000 feet beyond the known boundary?

Mr. ELLIS. At the time of permit we have to, we have to identify all these features and locations.

Senator SPECTER. How would that have related to the incident at Quecreek, had that 1,000 foot addition been in place, would this incident have been avoided?

Mr. ELLIS. Unfortunately, Senator, the problem as I see it with Quecreek was the accessibility of the final map as I go later on to show.

Senator SPECTER. How much later on do you show that?

Mr. ELLIS. I'll shut up and try to answer some of your questions, because I think I know where you're coming from. Since 1911, coal operators in Pennsylvania have been required to submit a final map of their operations when it closes, okay. That's been on file since 1911.

Senator SPECTER. But how good is a map, Mr. Ellis, if an adjacent owner will take somebody else's ground so that you don't know what the dangers are?

Mr. ELLIS. Senator Specter, it is not, bootleg mining I grant you occurred at times in the 1930s and 1940s, but it is not a common occurrence that you seem to imply.

Senator SPECTER. Bootleg mining now is not a common occurrence?

Mr. ELLIS. That's correct. Right now, yes. Okay.

Senator SPECTER. Do you agree with that, Mr. Yankovich?

Mr. YANKOVICH. At this point in time, do I think, it depends on the company, Senator, it depends on the size of the company. I believe that the larger companies tend to be more cautious and tend to be more careful about what they do. But as far as small companies who—actually there is less, there is less inspections done in smaller mines than there are in larger mines, so if it could occur, it would occur there as opposed to larger mines.

Senator SPECTER. Well, it seems to me that it is a potential problem of enormous magnitude when you can't check on it underground because there is no mechanism. That's something we want to get into, but obviously here at Quecreek—maybe you disagree with this, Mr. Ellis—here at Quecreek, the map was inadequate because there had been, as you call it, bootleg mining; correct?

Mr. ELLIS. That's, that's the speculation. However, there was also a final map of Quecreek that was correct and that was in the State inspector's hands.

Senator SPECTER. Would that final map have disclosed the bootleg mining?

Mr. ELLIS. My understanding is that, yes, it did, that the final map actually showed that the pillar of coal that Black Wolf thought it was mining, a sizable portion of that was not there.

Senator SPECTER. How would that map have shown it? Somebody would have to go down into the mine to see the bootleg coal mining. If you have a map which delineates the property, you wouldn't expect the adjacent owner to be encroaching on property which was not his.

Mr. ELLIS. You're assuming it was bootleg mining. If the facts, and see, the other problem we have, Senator, is that—

Senator SPECTER. I am not assuming that, that has been the report. Is that report inaccurate?

Mr. ELLIS. What's that, that there was bootleg—I haven't heard—

Senator SPECTER. That adjacent owner, the Saxman Mine, had moved beyond the line which was theirs and which was not disclosed in the map.

Mr. ELLIS. The mapping that this company had, my understanding is that a final map of that mine was made available to the State mine inspector and that did show the worked out sections, the sections that Black Wolf thought they were actually mining, that sizable portion was gone.

Senator SPECTER. We will come to that. There is some disagreeing witnesses behind you, the miners, they are shaking their heads in the negative. But that is why we have the hearing, we are interested in what you have to say and we are interested in what others have to say. We will find the facts, and we will make the factual determination.

Mr. ELLIS. We certainly stand ready to help you with those.

**STATEMENT OF JOSEPH MAIN, ADMINISTRATOR, DEPARTMENT OF  
OCCUPATIONAL HEALTH AND SAFETY, UNITED MINE WORKERS  
OF AMERICA**

Senator SPECTER. I would like to call now Mr. Joseph Main, the administrator of the United Mine Workers of America, Department of Occupational Health and Safety, since 1992. Responsible for oversight of mine accident investigations and mine inspections since 1998. He served on the Centers for Disease Control and Prevention Federal Advisory Committee on Mine Health Standards. Mr. Main testified before this subcommittee on July 22, 1992 at a hearing regarding coal dust monitoring.

Mr. Main, it's nice to see you again. We've had a number of hearings on mine safety, and regrettably, we are having one today. Thank you for coming, and we look forward to your testimony.

Mr. MAIN. It is a pleasure, Mr. Chairman. On behalf of the United Mine Workers and the miners who are represented across the country, I want to take the opportunity to thank you for holding this hearing today and asking some of the tough questions that really need to be asked here.

Senator SPECTER. We just started on tough questions.

Mr. MAIN. I think that once a better picture of what's going on gets laid out, I think there will be some more questions that really need to be asked.

I would start off my testimony this morning, I'm going to try to be very brief. No, there is not adequate funding of MSHA as a start. Second, with regard to some previous testimony that was submitted for the record, there is some major disagreements with regard to the direction that MSHA, the leadership of MSHA is moving this agency when it comes to what we believe needs to be done to protect the miners. We have raised a number of those issues directly with the agency and some involved enforcement of the mine law here in the State of Pennsylvania, which I will not get into today, but it is a troubling problem that, I think you know that point in time in the role of the Mine Act, we are taking, of course, this very, very mine.

With regard to Quecreek, and I will start there and talk about the state of affairs on the national level last, but one thing, I think that all of us recognize that that was a miracle, that nine miners were pulled out of the Quecreek Mine. A lot of my buddies who I work with on mine rescue were there at the mine and I, like many others, sat on the sideline watching as the rescue efforts unfolded, and I would have to tell the miners they had some of the best that has been around to carry out that job. We just recently served together in Alabama at a mine disaster.

I would like to take the time to pass on appreciations to Governor Schweiker, whose efforts brought to bear resources we would all like to have seen in rescue efforts in the past, that really I think helped the rescue process work.

But having said that, we are now to the questions of what went wrong with Quecreek, and I think there are a lot of questions that need to be asked. The public and the miners all deserve a clear accounting of what went wrong.

How did so many miners get in a situation that their lives were placed at so much risk? How did the coal company get so close to

a large uphill underground lake of water and cut into it, jeopardizing those miners' lives? What signs did the company have about the closeness of the underground lake as they mined toward it? What was the seepage, or was the seepage to the coal seam a warning in advance? Did the company have advanced warnings as they mined closer to those old workings? What did the pre-shift and on-shift examinations that the mine operators are required to conduct each day at that mine show to report the conditions the miners were in? What did the public hearings that was held to allow the permitting of the Quecreek Mine to begin with show? We've heard that there has been a number of public citizens show up at those hearings that raised concerns in advance of the approval about the large body of water and potential of the mine mapping being inaccurate. Those are all records that we think are pertinent.

PREPARED STATEMENT

Were the maps wrong at Saxman? Were the maps wrong at Quecreek? Those are all fair questions that we believe have to be answered to get to the truth of why so many miners were put at risk.

[The statement follows:]

PREPARED STATEMENT OF JOSEPH A. MAIN

In late July, the nation watched as rescuers scrambled to reach nine miners trapped in a coal mine 240 feet below the earth's surface in south western Pennsylvania. The real life drama played out for more than three days as Americans, from coast to coast, were glued to their TV's and radios praying for the miners to be found alive at the Quecreek Mine.

Families of the trapped miners gathered in anguish at the Sipesville firehouse near the Somerset mine, awaiting word on the fate of the missing miners. It was a scene reminiscent of accidents that far too often tragically strike coal mining towns across the country. As the nation nervously awaited word from the rescue site, minutes turned into hours and hours into days with hopes for the rescue of miners fading fast. Water pumps, large drill rigs and rescuers rushed to the scene to save the miners. After three days of exhaustive efforts, prayers were answered when the miners were all found alive. Many called the survival and ultimate rescue a "miracle" as the nine-trapped miners were pulled from the jaws of death. The nation witnessed this coal mining catastrophe in the making come to an end. They experienced the enormous dangers miners face daily. They better understood the importance of mining safety laws—along with the need for stringent enforcement.

From the moment millions of gallons of water rushed into the Quecreek mine from the old Saxman mine workings, questions were raised. What went wrong? How did so many miners' lives get placed at such a high risk? How did the coal company get so close to such a large uphill underground lake of water and cut into it, jeopardizing miners lives? What signs did the company have about the closeness of the underground lake as they mined toward it? Was there seepage through the coal seam to warn them? Did the company have advance warnings as they mined close to the old workings? Were the mining maps wrong from the old Saxman mine? Were the maps for the Quecreek mine accurate? What information was available on the massive amount of water embodied at the higher elevation? What did the company know about the conditions in the adjacent mine and when did they know it? There is much to be examined in the wake of the Quecreek accident.

Answers to these questions are still illusive as federal investigators conduct inquiries. Unfortunately, the information the Federal Mine Safety and Health Administration (MSHA) has been collecting on the accident is currently shielded from the public. It is not known what information will be shared with the public on the accident or when that will happen. Like other recent investigations of mining accidents, MSHA's investigative process is beginning to raise questions.

On the heels of the Quecreek accident, the UMWA quickly called upon MSHA to conduct a review of mining operations nation-wide in order to assess similar dangers. We called on MSHA to launch inspections to identify mines that have a poten-

tial for inundations. While investigations into Quecreek were ongoing, the UMWA called for additional safeguards to protect miners where the boundaries of coal barriers could not be verified and potential inundations exist. That included requirements for larger coal barriers and earlier drilling to take place until permanent solutions are found. We felt this was a prudent safety policy. The current federal law that calls for drilling only 20 foot holes, maintaining ten feet ahead of mining (which leaves only a 10 foot barrier of coal between the miners and potential lakes of water) as a mine gets within 200 feet of where a mine operator thinks a barrier exists is inadequate protection for miners! The Governor of Pennsylvania agreed and ordered drilling to begin 500 feet from the suspected boundaries.

The capability exists to drill more than 20 foot holes ahead of coal faces where miners are working so that mined out areas can be detected. Some mine operators have been drilling holes for hundreds and thousands of feet horizontally in coal mines. Some of these mines are in Pennsylvania. Although mine operators drill the long holes to drain methane gas in coal blocks, some do it to detect mined out areas of abandoned coal mines. As Quecreek points out, drilling holes well in advance of mining can and should be required for detecting faulty boundaries. In the end there must be verification of boundaries or large coal blocks to be in place as barriers separating old workings. Additionally, more scrutiny must take place in mines to detect early signs of water seepage from abandoned mines. Based on information available, the barrier between Quecreek and the old Saxman mine was mined up to a razor thin barrier when the water broke through. With the lake of water at a higher elevation one would have expected pressure to have caused water with the stagnant mine odor to seep in to the Quecreek, giving some warning.

The near disaster at Quecreek has also placed a national spotlight on coal mine health and safety—and rightfully so. Some were shocked to learn that 42 coal miners were killed on the job last year and that the number of coal miners killed on the job had risen each year for the last three years. Many were also surprised to learn that the United States had just suffered the worst coal mine disaster in nearly two decades when a mine explosion ripped through the Jim Walter Resources #5 Mine in Brookwood, Alabama last September. That mine disaster, which killed 13 coal miners, came in the shadows of the September 11, 2001 attacks on America. (Although investigations into that disaster are ongoing, findings thus far have identified numerous flaws in MSHA’s enforcement of the Mine Act.) In one short moment in time many Americans learned that something was terribly wrong with coal mine health and safety.

The response to this troubling safety record is more than disturbing. In the face of three years of increases in coal miners’ deaths and the worst coal mine disaster in 17 years, the Bush Administration sent a budget proposal to Congress urging cuts in federal coal mine enforcement. Instead of putting more police on the beat to increase enforcement of the mine safety laws and curb mining deaths—they called for cuts in coal mine enforcement personnel. We do appreciate the recent actions of the Senate Appropriations Committee in proposing funding increases to correct these problems. We, however, found that to only be the beginning of actions to undercut protections for miners. In December of 2001, MSHA announced that they halted action on a number of important health and safety rules aimed at increasing protection for miners. Rules responding to; surface haulage accidents (the number one killer at surface mines); flaws in use of Self Contained Self Rescuer devices; and standards requiring use of continuous respirable coal mine dust monitors to prevent the black lung disease, were among those eliminated.

The Administration’s budget also called for an end to the highly successful “miners choice” chest x-ray program. This program had the support of Congress and miners, which improved miner participation in chest x-ray programs to identify the black lung disease. It also provided surface miners with chest x-rays. Who will no longer have chest x-rays available to them. MSHA recently inflicted even more damage on the efforts to end black lung disease with policy changes in the enforcement of the respirable coal mine dust standards. In July, the Agency implemented policies contrary to past congressional support that neutered MSHA mine site enforcement of the coal mine dust standards. The policy reduced the number of MSHA dust sampling inspections from six to four a year. They also barred inspectors from using any of the four samples to cite mine operators for over compliance. MSHA inspectors would only use those as targets for follow-up sampling—and the operator could expose miners to dust levels well in excess of the current standard before compliance dust sampling inspections would be triggered. These policies are contrary to logic, needs of miners and findings of Congress.

The actions to eliminate health and safety standards that would increase protection for miners did not end after Quecreek. On September 26, 2002, MSHA announced the withdrawal of action on “Air Quality, Chemical Substances and Res-

piratory Protection Standards". Those standards have been in the works for some time to upgrade the levels of chemicals and harmful agents coal miners have to breathe. The current standards are three decades old and allow miners to be exposed to chemicals and agents that are now recognized as unhealthy. Prior to this announcement, MSHA abruptly withdrew action on rules that would require conveyor belting in mines that would not catch fire as quickly as older belting—ending years of work on standards to reduce fires that far too often threaten miners lives.

As Quecreek unfolded it was believed the Agency would change course. That was wrong! Not only have we heard no calls by the top levels of MSHA to "beef up enforcement of the Mine Act" since Quecreek, we have instead heard calls for the Agency to move more toward co-operation with mine operators. As the Administration's proposed budget cuts in coal mine enforcement continues to be embraced by the Agency, they continue to shift even more coal enforcement resources toward compliance assistance programs. While compliance assistance has its place, it should not be at the expense of policing the nation's mines. The Agency is also reinforcing the shift in the approach toward compliance assistance by changing the name of those that police the nation's mines. With an administrative stroke of a pen the Agency is finalizing plans to eliminate the "coal mine inspector" created by Congress in 1969. They are preparing to give them to a less enforcement-orientated title—Health and Safety "Compliance Assistance Specialists." That sends the wrong message! Complaints about actions to weaken enforcement are becoming far too common as the direction of MSHA shifts. As we seek information from MSHA to investigate the complaints being raised, delays and stonewalling has increased. A number of complaints have been filed with MSHA over delays or refusal to provide Freedom of Information requests.

When one assesses the leadership of the Agency it is easy to see why MSHA is becoming an agency favoring mine health and safety policies urged by the very industry being regulated. That is because the mining industry has become a hiring hall for the top policy and career jobs in the Agency. Currently, the Assistant Secretary for MSHA, the two Deputy Assistant Secretaries for MSHA, the Assistant to the head of MSHA, the Chief of Health and the Chief of Safety for Coal all came from the corporate levels of the mining industry. With coal miners historically being one of the most often killed workers in this country, it is understandable why they do not take kindly to turning over their health and safety to the company bosses.

In closing, we urge Congress to; Assure that a thorough investigation of the Quecreek accident takes place—with increased protections so other miners will not be placed in similar jeopardy; Reverse the funding cuts sought by the Bush Administration, including a beefing up of coal mine enforcement, restoration of the "Miners Choice" chest x-ray program and restoring MSHA's coal mine dust enforcement program; Act to reverse the current course which is undercutting the enforcement of the Federal Mine Safety and Health Act; Move to restore regulatory actions on health and safety rules that affect miners; And send a strong message to the leadership of MSHA that Congress intends that the Mine Act be fully enforced and standards in the nation's mines be improved. We would also urge Congress to examine the process of filling top agency positions in MSHA. Thank You.

Senator SPECTER. What do you think, Mr. Main, do you have enough to venture a judgement?

Mr. MAIN. I have enough to venture certain judgements, some unfortunately we do not. One of the reasons for that is that the State and Federal investigators that are putting most of the stuff together are doing that behind the scenes and a lot of that information has not been put out to the public.

Senator SPECTER. I think it's important for investigations to be concluded. When they're done behind the scenes, there are quite a few comments and concerns about not having public hearings. That's one of the congressional oversight functions on the State level as well, Mr. Ellis knows, he worked for the State House of Representatives, to have public hearings and disclose the facts and allow the public dialogue. Whenever you raise a question during public dialogue, people hear it and come forward with more information. That's the way to encourage more fact finding, by having matters in the public dialogue. If you have them all concealed and

then you file some long report that gathers dust, it doesn't really aid in the process.

So when I ask you about a judgement, I use the word carefully. I'm not interested in speculation or guessing, I'm interested here professionally, you've been at this a long time, and my question to you is do you know enough to have a judgement?

Mr. MAIN. On certain things I do have, and on the public hearing issue, yes, we do. We came out early in support of the public hearing. The last one that was done in a situation like this actually was here in Pennsylvania, it was following the Coca Cola Tunnel disaster where miners cut into water and nine miners were killed.

Senator SPECTER. When was that?

Mr. LAURISKI. That was in 1977 in Western, or in Eastern Pennsylvania.

We saw the dimensions of what was going on here and we've had a number of problems with the way the investigations have been conducted in the past and raised a lot of concerns about those, and we were one of the ones on the forefront calling for a public hearing to get to the bottom of that so the facts could get out and the public could see open faced what was going on.

Unfortunately as we sit here now, we are barred from many of those facts. We are on the sidelines, so to speak, this is not a mine that we represent, but on the sidelines trying to collect information.

Senator SPECTER. No, you are not, Mr. Main, you are on the playing field.

Mr. MAIN. We are trying to get on the playing field.

Senator SPECTER. We are going to get those facts from the investigation, in the public domain as well.

Mr. MAIN. The questions that I posed I think were all important ones that we are hopeful that the investigators were asking. We don't know that; but those are the ones that should be within the framework of the questions raised, and what was the inspector's findings when they were last in those mines? Those are very, very important.

We need to keep in mind every mine operator's company is required to, every shift, before they send miners into an area of the mine workings, inspect that mine and to make sure that the conditions are safe. What we read yesterday in the papers was very disturbing to me, it confirms some of our suspicions, Senator, that there was advanced warnings. But given some certain facts here, was there enough facts—

Senator SPECTER. What facts do you know, Mr. Main, if any, on advanced warnings? Because that's a critical point.

Mr. MAIN. There is some that we unfortunately are unable to ask questions about, because a record has not been developed. Was there citizens that showed up at the public hearings that laid out concerns about a large body of water that the mine operator would be mining next to? Was there concerns about inaccurate maps? Was there advanced warnings as they mined into that, was that things that the company would need to ask before this tragedy occurred?

The question about the mine mapping, I think everyone has agreed that we have had so many problems with the mapping in

this country that we've got to fix that problem. We need to figure out a way to have the most accurate maps. But in this case I understand that they had production records that may have been available to show that they were still producing coal at the old Saxman Mine well after the mining had, the mapping had ended in the mine. I think the mapping ended in the 1950s, they were still mining into the 1960s. I mean, production records would have given someone an indication had they looked at that.

Senator SPECTER. Production records of Saxman?

Mr. MAIN. Yes, that there was still mining at the time of the map.

Senator SPECTER. We'll look into that.

Mr. MAIN. There is a number of questions along those lines. The law currently as it is written, that requires the drilling in advance with the 200 feet, is inadequate, and there is a long list of accidents that have occurred, many since the Mine Act passed, where miners were killed because they mined into areas from either inrush of water or dangerous gases and were killed. I think the Governor of Pennsylvania had it right when he called for an immediate extension of that distance to 500 feet. We urged them to take similar approaches and to increase those boundaries, figure out what they have got in mines—

Senator SPECTER. 500 feet and up?

Mr. MAIN. At this stage I feel a lot more comfortable with 500 feet than I do 200 feet. But there is some other technologies and things that may even enable us to expand that more.

Senator SPECTER. Is 500 feet enough?

Mr. MAIN. At this stage I'm not willing to say that that is enough.

Senator SPECTER. Let us know.

Mr. MAIN. The reason I'll say that is that we have mines in Pennsylvania that is drilling hundreds and thousands of feet, some of them to detect voids, we talk about a standard that only has us drilling 20 feet, and that is 10 feet ahead of the actual coal face into the plot. It tells us that the knowledge you were using in the mines is outdated, we can drill a lot deeper holes than there are now.

In conclusion, I just have to say that with regard to the Mine Safety Act, we have encountered numerous problems, attempts to cut the budget, cut out the dust program that we talked about in 1991, I'm not sure if you are aware of this but there has been some major cutbacks in the enforcement program that your Committee gets support for over the years. We really don't have MSHA out doing dust inspections at coal mines anymore, only target inspecting that may lead to follow-ups.

We have a concern about the folks who are running this agency leading a path away from the Mine Act. And we recently just found out there is attempts on their way to eliminate the famous Coal Mine Safety Inspector Title, that those we now have be called Health and Safety Analyst of some sort, and no longer be Coal Mine Inspectors—be Compliance Assistance Analysts. We're moving the resources in enforcement as we cut back more to mine safety, or I mean to compliance assistance.

Senator SPECTER. Thank you very much, Mr. Main.

**STATEMENT OF HOWARD MESSER, PROFESSOR OF LAW, UNIVERSITY OF PITTSBURGH SCHOOL OF LAW**

Senator SPECTER. We turn now to Howard Messer, Esquire, counsel for seven of the nine miners who were trapped in the Quecreek Mine. Mr. Messer has been a professor of law at the University of Pittsburgh School of Law since 1986. Past President of the Pennsylvania Trial Lawyers Association, and graduate of the University of Pittsburgh School of Law.

Thank you for joining us, Mr. Messer, and we look forward to your testimony.

Mr. MESSER. Thank you for giving me permission to speak with you today, Senator. With all due respect to everybody that's testified here today, I think I have a different viewpoint of the calamity that could have happened at Quecreek than most other folks.

The reason we're here today and the reason we're talking about mine safety in Pennsylvania is because of all these men behind me. The nine miners that walked out of that mine were saved by a phone call from Dennis Hall, as you already have mentioned. The other nine miners were trapped there for 77 hours.

The other thing we shouldn't forget here is that there are a number of family members, all of the wives sitting in fire halls in Sipesville and Shanksville, and I'm not sure of everywhere else, but everybody was up, had as much emotional connection with this event as the miners had. As the Governor stated, it was an extremely emotional time.

But what we're here to find out is what could have made a difference. As you pointed out, what could have made a difference is understanding what I think is a backward understanding of what could have given safety to these men.

The simple fact is that there is encroachments on a lot of leases in Western Pennsylvania and throughout the State. It is widely accepted among coal operators in Western Pennsylvania, with all due respect to Mr. Ellis, that they know about possible encroachments, they don't always occur, but there is always that possibility. Therefore, what we have to conclude is that all the mine maps are wrong, that unless we have a way in which defined accurately what a mine map must entail or doesn't have, we are on a wild goose chase.

There is a very simple—and I would offer to you, and I'm not a mining engineer, there is a very simple way in order, I believe, to define and to implement an excellent review of all mine maps and upgrade them all. For example, in this situation, it would have been very simple for Black Wolf, or Quecreek, whoever owns this coal, to locate the Saxman Mine and the part that was contiguous to their property. Obviously, that is the most important element. Where was Saxman Mine in relation to Quecreek?

Once you determine that and once you accept that there may be an encroachment, then you have to drill for it. You should not place the risk of finding the water on the miners, you should place the risk of finding the voids and the water on the people that mine the coal. These men go into a coal mine for \$15 an hour and risk their lives. It should be imperative for the State and the Federal Government to have the burden of proof on defining these voids and

mines, not making the miners do it themselves by horizontal drilling or some other way.

There might be a misconception that the miners did not know that they were approaching a mine full of water. They knew that they were approaching a mine, they were not told and not advised that mine had been flooded and there was 77 million gallons of water sitting there.

It is very important, and I would request your consideration for the fact that we need open hearings here.

Senator SPECTER. Mr. Messer, was it known that the adjacent mine had this tremendous quantity of water?

Mr. MESSER. Yes, sir, in fact some of the homes that were sitting on top of the mine were getting their house water from the water in the mine. So that in the community, not only in the community, but in the mining—to the DEP and others, they certainly knew that the water was there. Somebody had to be treating it, it had to be coming out of somewhere else as well. I mean, there had to be notice of that fact.

Senator SPECTER. In addition to the homeowners as you describe them above the mines getting their water—

Mr. MESSER. Yes, sir.

Senator SPECTER [continuing]. Was there other evidence that the mine had water?

Mr. MESSER. I can't answer that question because I have not been privy to any of the investigations being done by any of the governmental bodies.

Senator SPECTER. When the homeowners got the water, they must have had it treated in some way, they could not use it as it came from the Saxman Mine could they?

Mr. MESSER. I don't know, I can't tell you that, but it clearly proves the water was there. Whether it was good water or bad water, I can't tell you, but it shows that the water was there.

Senator SPECTER. Proceed, please.

Mr. MESSER. I have been faced in my representation of these men and their wives and families with a, what I consider to be an inadequate attempt to make them privy to the facts of what happened to them. In order for me to get their statements from MSHA, I had to sign a confidentiality agreement that I would not release any of the information in those statements to anyone, including this committee.

Senator SPECTER. Which statements were those?

Mr. MESSER. The ones the miners themselves made to MSHA. As you know when you give a statement to the FBI or a client gives a statement to the FBI, the lawyer is entitled to a copy of the statement. It seems to me the miners should have the same benefits.

Senator SPECTER. Are you saying the miners gave statements, they then wanted a copy of the statement and they were denied it unless you as their lawyer agreed to keep it confidential?

Mr. MESSER. That's correct. And I had to sign that confidentiality agreement and return it to MSHA before they would furnish me with those statements.

In addition, even after they knew that I was representing at least five of the miners at that point, a meeting was called at the premises of Black Wolf Mining, where, by the way, all of the inves-

tigation work and interviews had taken place, to tell the miners about the mine map that was discovered in the museum.

I requested permission to attend with my clients this meeting that was called by their employer and to be attended by MSHA, and I was denied access to that meeting by MSHA and indicated that at that point I would be a trespasser.

Senator SPECTER. Who was present at that meeting?

Mr. MESSER. The representatives of Black Wolf, the representatives of the Department of Environmental Protection and MSHA. And I believe all the miners were invited to attend as well.

Senator SPECTER. Did the miners attend, any of the miners attend?

Mr. MESSER. Yes, they did.

Senator SPECTER. But you as counsel—

Mr. MESSER. I was not permitted to attend. The reason for that, and I don't want to dwell on it anymore, the reason I feel that these men and women need legal representation is obvious, they are not sophisticated and they haven't been trained to understand what the process is or the procedures are, and the least we can do is afford them the rights that we afford criminals charged with crimes, which is counsel to help them move through and understand this process.

Senator SPECTER. You think they ought to have at least as many rights as criminals?

Mr. MESSER. Yes, sir.

Senator SPECTER. May the record show the miners and their wives are smiling at that analogy.

Mr. MESSER. Let me say lastly, Senator, that there aren't many of us that came to work today, and I'm working and so are you and many of the other ladies and gentlemen in this room are here because they're working, but they do not walk into their place of employment expecting a governmental agency or their employer to protect them from personal injury. Most of us do not on a daily basis risk our lives to do our jobs. Contrary to what most of us do, these miners risk their lives every day to mine coal. They go into the mine and they must rely, they do not have any other resource, but to rely upon the Federal Government through MSHA, the State government through the Department of Environmental Protection and from their employer to protect them from unforeseen events or known events or suspected events or possible events. They have to trust and have confidence that the information that they are given will protect them.

So this Commission, this Committee that you are in charge of, must understand that this isn't an ordinary circumstance. We could have lost 19 men, and it all may be due to the fact that somebody should have just said, close this section off and get out, it is just too dangerous.

Senator SPECTER. Mr. Messer, the whole world knows that this is no ordinary matter and that these men could have perished. There are many others in mines every day, even as we speak who are undertaking these risks. And our purpose of being here is not only to praise these men but to try to prevent an occurrence with others.

Mr. MESSER. We thank you, because I think we found out more information today than any of the hours of hearings we have sat through up to this point.

**STATEMENT OF DAVID REBUCK, PRESIDENT, BLACK WOLF COAL COMPANY**

Senator SPECTER. And we have just begun. Our next witness is David Rebeck, President of the Black Wolf Coal Company and Superintendent of the Queecreek Mine. Previously Mr. Rebeck had been president of Rox Coal, Inc. and executive vice president of Mincorp Inc. Mr. Rebeck received his bachelor's degree from Penn State University and his master's degree from the Indiana University of Pennsylvania.

Mr. Rebeck, at the outset, as a matter of fairness, although I'm sure you have counsel who has advised you, there is a possibility that whatever you say could be incriminating both as to civil and potential criminal liability. There's no requirement of warnings such as Miranda warnings, you're not in custodial interrogation, but just as a matter of fairness, I want to alert you to that. Although I am sure you have had counsel and you know what you are about to do. For the record, I want to say those few words.

Thank you for joining us and to the extent you wish to testify, we would appreciate it.

Mr. REBUCK. Thank you, Senator Specter. My testimony really deals with the rescue itself, and I would present it to you as part of the record.

I would like to publicly thank all the many people, businesses, agencies who assisted in the rescue of the nine miners here at Queecreek. There was an overwhelming number of people that contributed to the success of the rescue operation. Many donated their time, equipment, supplies and expertise. Companies throughout not only Somerset County and Pennsylvania but actually from all over the country provided manpower, equipment, supplies, technical advice and support.

Governor Schweiker delivered invaluable leadership and inspiration to the rescue crews and to the miners' families. Secretary Hess, Pennsylvania Department of Environmental Protection, mine safety professionals from Pennsylvania's Bureau of Deep Mine Safety, they were all instrumental to the successful rescue effort.

Secretary Lauriski, the Mine Safety and Health Administration, personnel from Johnstown field office, MSHA District 2 Office, the engineers and scientists from MSHA Tech Support, MSHA's Mine Emergency Unit were all available to provide expert resources and guidance. There were many other State and Federal agencies involved.

In particular, I must recognize the efforts of the Pennsylvania State Police. Sergeant Madigan and troopers from Somerset Barracks responded early to the situation and controlled the rescue sites, they established family quarters at Sipesville Fire Hall and they helped escort equipment and supplies to the site.

Our local government representatives and staffs, Representative Murtha, State Senator Richard Kasunic, State Representative Bob Bastian and you and your staff, Senator Specter, were available to provide any assistance.

Our local community provided support by the hundreds, through local fire departments, emergency medical units, Sipesville Fire Department Ladies Auxiliary, counselors, churches, community organizations, neighbors and individuals who made offers to do whatever was needed.

Closest to my heart is our own Quecreek Mine Team Members and other coal miners throughout our area who volunteered their time. They worked relentlessly in difficult conditions in the mine pit or in the cornfield to reduce the level of water in the mine. These hardworking men toiled generally out of sight of the public eye, but certainly without their efforts the rescue would not have been a success.

I would also like to mention the nine miners that are to our left over here, they had escaped the mine that night and were determined to stay and assist in the rescue efforts, whatever their assigned duties. These miners are here today and it is their unselfish spirit to succeed in the rescue that exemplified all who participated.

These men along with other members of our staff were the very first responders to the accident and their decisions and actions in the initial hours of the rescue effort were instrumental in successfully completing the mission.

I especially appreciate the faith and determination of the rescued miners and their families.

#### PREPARED STATEMENT

Senator Specter, there is not enough words to express my sincere appreciation for the dedication of the hundreds of people that were involved in this rescue. If it were possible I would like to thank each one individually, but I appreciate the opportunity you gave me here today.

Ultimately, I thank God for his Divine guidance throughout the rescue operation, only through His help was the miracle in the mine achieved. I hope and pray that God will continue to bless everyone. Thank you.

[The statement follows:]

#### PREPARED STATEMENT OF DAVID REBUCK

Thank you, Senator Specter, for inviting me here to offer comments today. My name is David Rebeck. I am President of Black Wolf Coal Company and Superintendent at the Quecreek Mine. I am a life long resident of Pennsylvania and have served in our state's mining industry for over 27 years. I have a BS degree in Mining Engineering from the Pennsylvania State University and a Master of Business Administration degree from the Indiana University of Pennsylvania.

The Quecreek Mine is owned by Quecreek Mining, Inc., a subsidiary of PBS Coals, Inc. Black Wolf Coal Company is the contract operator at the Quecreek Mine. A partner, Charles "Chuck" Hankinson, and I established Black Wolf Coal Company in 2001 specifically to operate the Quecreek Mine and to eventually grow from there. At present, the entire revenue for Black Wolf Coal Company is derived from operations at Quecreek.

Chuck and I constitute the entire staff of the company along with the Quecreek mine team members. All staff functions one would normally associate with larger companies, such as engineering, accounting, legal and other services, are provided to us by vendors. You can imagine being a smaller company involved in an undertaking with the magnitude of the Quecreek rescue that we desperately needed the help and assistance of many others, which, thankfully was received.

Today I would like to publicly thank the many people, businesses and agencies who assisted in the rescue of the nine miners at the Quecreek Mine.

An overwhelming number of people and businesses contributed to the success of the rescue operation. Many donated their time, equipment, supplies and expertise. Companies throughout not only Somerset County and Pennsylvania, but actually all over the country, provided manpower, equipment, supplies, technical advice and support.

Governor Mark Schweiker delivered invaluable leadership and inspiration to the rescue crews and the miner's families. Secretary David Hess, the Pennsylvania Department of Environmental Protection and the mine safety professionals from Pennsylvania's Bureau of Deep Mine Safety were instrumental to the successful rescue effort.

Asst. Secretary David Lauriski and his Mine Safety and Health Administration (MSHA) team, with personnel from the Johnstown Field Office, the MSHA District 2 office, the engineers and scientists from MSHA Tech Support and MSHA's Mine Emergency Unit provided expert resources and guidance.

Many other state and federal agencies provided worthy assistance. In particular I must recognize the efforts of the Pennsylvania State Police. Sgt. Patrick Madigan and troopers from Somerset Barracks responded early and controlled the rescue sites, established the family quarters at Sipesville Fire Hall and escorted equipment and supplies. Our local government representatives and staffs—Rep. John Murtha, State Senator Richard Kasunic, State Rep. Robert Bastian and you and your staff, Senator Specter—were available to provide any assistance required.

Our local community provided support by the hundreds through local fire departments, emergency medical units, the Sipesville Fire Department and Ladies Auxiliary, counselors, churches and community organizations, and neighbors and individuals who made offers to do "whatever was needed". The words of hope and encouragement from individuals throughout the world which were passed on to us, helped us maintain positive morale.

Closest to my heart is our own Quecreek Mine team members and other coal miners throughout our area who volunteered their time. They worked relentlessly in difficult conditions in the mine pit and in the cornfield to reduce the level of water in the mine. These hardworking men, under the supervision of our Mine Foreman, Joe Hoffman, and Chuck Hankinson, who also is the mine's Chief Electrician, toiled generally out of sight of the public eye, but certainly, without their efforts the rescue would not have been a success.

I want to mention the nine miners who had escaped from the mine that night and who were determined to stay and assist in the rescue efforts whatever their assigned duties. These miners are in attendance today—Larry Summerville, Joseph Kostyk, Ronald Schad, David Petree, Ryan Petree, Wendell Homer, Frank Stewart, Douglas Custer, and Barry Carlson—and their unselfish spirit to succeed in the rescue exemplified all who participated.

These men along with Dave Keller, our Safety Director, Dave Harclerode, Mine Clerk, Joe Yuhas, and Joe Gallo of PBS Coals Engineering, were the very first responders to the accident and their decisions and actions in the initial hours of the rescue effort were instrumental in successfully completing the mission.

I especially appreciate the faith and determination of the rescued miners and their families throughout their ordeal. I especially want to thank Quecreek miners Doug Custer, James Weiland and Leroy Lehman and later John Weir of PBS Coals who were unfailing with their assistance in communicating with the families.

Senator Specter, there are not enough words to express my sincere appreciation for the dedication of the hundreds of people involved in this rescue operation. If it were possible I would thank each person individually. So to all I would ask to please accept my sincere and heartfelt thanks on behalf of the nine team members, their families and all involved with Black Wolf Coal Company and the Quecreek Mine. Ultimately, I thank God for His divine guidance throughout the rescue operation. Only through His help was the "Miracle in the Mine" achieved. I hope and pray that God will continue to bless everyone.

Senator SPECTER. Thank you, very much, Mr. Rebeck. I'm interested to know the corporate structure. Quecreek is a subsidiary of PBS Coals, Inc.; is that correct?

Mr. REBUCK. That's correct.

Senator SPECTER. Black Wolf is the contractor for Quecreek?

Mr. REBUCK. That's correct. We are the contract operator at the mine.

Senator SPECTER. Black Wolf is the contractor for Quecreek, Mincorp Inc. and Mincorp—

Mr. REBUCK. Mincorp is the parent company, PBS Coal is the subsidiary and Quecreek Mining is a subsidiary of PBS Coal.

Senator SPECTER. Your resume lists you as an official of Mincorp?

Mr. REBUCK. Former.

Senator SPECTER. Former. You're not an official of Mincorp now?

Mr. REBUCK. That's correct.

Senator SPECTER. Do you speak only for Black Wolf or do you speak also for PBS?

Mr. REBUCK. I speak only for Black Wolf Coal Company.

Senator SPECTER. To the extent you wish to comment, Mr. Rebeck, did Black Wolf know that there had been encroachment by Saxman into Black Wolf's land?

Mr. REBUCK. We did not.

Senator SPECTER. To the extent you wish to comment, what efforts did Black Wolf make to ascertain the accuracy of the maps which you were using?

Mr. REBUCK. We accepted the maps that was on our approved permit.

Senator SPECTER. Accepted what maps?

Mr. REBUCK. The maps as indicated on the permit application.

Senator SPECTER. Do you accept what Mr. Messer has said about the frequency of encroachment by adjacent mine owners like Saxman onto Black Wolf's land?

Mr. REBUCK. I was not aware of any encroachment. I have not seen any encroachment at all.

Senator SPECTER. Aside from not being aware of any encroachment, to the extent you wish to comment, were you aware that it was a practice or a common practice to have such encroachment? Here to lay all the cards on top the table, Mr. Rebeck, I'm asking you to the extent you want to comment whether you had a duty of inquiry. If you know it, that is one thing, and you testified you didn't know it.

Mr. REBUCK. That's correct.

Senator SPECTER. The second level of responsibility arises on a duty of inquiry, if you know that it is a common practice to encroach, then there may be a duty of inquiry on the part of Black Wolf. So my question to you, again, to the extent you wish to answer, did you know that it was a common practice to have encroachment?

Mr. REBUCK. I do not know that it is a common practice for encroachment.

Senator SPECTER. Have you ever heard of encroachment, to the extent you wish to answer?

Mr. REBUCK. I've heard all kinds of rumors, but I have never actually encountered any encroachment since I have been in the mines.

Senator SPECTER. With respect to the water, were you aware of the information Mr. Messer testified to, that the homeowners above Saxman were getting the water from that property?

Mr. REBUCK. I am now, sir, yes.

Senator SPECTER. But had you been prior to July 24?

Mr. REBUCK. On the night of July 24, after the accident occurred, I was aware, yes.

Senator SPECTER. How about prior to July 24, to the extent you wish to answer?

Mr. REBUCK. I cannot say for sure if I was.

Senator SPECTER. Might have?

Mr. REBUCK. I might have.

Senator SPECTER. Might have?

Mr. REBUCK. I do not know.

Senator SPECTER. Think about it for just a minute, Mr. Rebeck, to the extent you want to answer. What leads you to say you might have? What is going through your mind that leads you to that statement?

Mr. REBUCK. Because I do know that now and I'm not sure if I did know that before or if this was afterward.

Senator SPECTER. Mr. Rebeck, you were the Superintendent of Black Wolf, Quecreek, and to the extent you wish to answer, did you know that there was significant leakage of water into the Black Wolf Mine?

Mr. REBUCK. There was not significant leakage of water into the Black Wolf Mine.

Senator SPECTER. There was not?

Mr. REBUCK. No, sir.

Senator SPECTER. There had not been any complaints by any of the miners about the leakage of water, to the extent you wish to answer?

Mr. REBUCK. Not that I'm aware of; we did have water.

Senator SPECTER. You say you did have water.

Mr. REBUCK. Yes, and that condition has been throughout the entire mine, not only in this particular area. So when there are reports of roof water and they are investigated and they are discussed, the conditions that were in that mine did not lead me to believe that we were approaching water from an abandoned mine.

Mr. ELLIS. Senator, could I interject something here?

Senator SPECTER. No, but you may in a minute.

Mr. ELLIS. Okay.

Senator SPECTER. You say you did know there was water there?

Mr. REBUCK. Water where?

Senator SPECTER. In the Quecreek Mine.

Mr. REBUCK. Yes, sir, that is common throughout.

Senator SPECTER. Common practice, but what you are saying is, to the extent you wish to answer, you didn't know it was excessive or dangerous water; is that what you are saying?

Mr. REBUCK. That's correct.

Senator SPECTER. We are going to take a break for just about 5 or 10 minutes, because I'm going to want to talk to the miners before we proceed with the hearing, so I thought I would just give you a notice that in just a few minutes we are going to take a break.

Mr. ELLIS. Could I just put something on the record?

Senator SPECTER. Mr. Ellis, you may.

Mr. ELLIS. Thank you. This line of questioning about—

Senator SPECTER. If anybody has a comment they want to make, we have gone over on the red light, I even turned the red light off, because while the rules are for 5 minutes, this matter is of sufficient importance to take whatever time it takes. So if anybody has

something they want to say, feel free to interject. Go ahead, Mr. Ellis.

Mr. ELLIS. On this issue of whether or not there were recursary conditions. Much of the questions seem to be coming from a news article that appeared yesterday. I just, for the record, the State select panel that Governor Schweiker convened that is conducting public hearings, 2 weeks ago had the State mine inspector responsible for Quecreek testify before them, and he said that there were no early indicators or warning signs that would lead him to believe.

Senator SPECTER. Who testified to that?

Mr. ELLIS. The State mine inspector who was responsible for inspecting Quecreek, he was there within at least a week before the accident happened. He definitively told the panel that there were no precursory conditions or early indications that a breakthrough was imminent, so—

Mrs. MAYHUGH. He said it was dry, too, and it wasn't. This inspector said it was dry. I was there.

Senator SPECTER. We'll give you a chance to testify in just a minute, but I want to hear what you have to say. May the record show that a lady with a baseball cap and a red jacket—

Mrs. MAYHUGH. Mrs. Mayhugh.

Senator SPECTER. Mrs. Mayhugh.

Mrs. MAYHUGH. Mrs. Mayhugh, everybody knows me.

Senator SPECTER. Mrs. Mayhugh. We are going to give you a chance to testify, but I think in the interest of order, we will go to the front row. But you will have a full chance to say whatever you want to.

Mr. Rebuck, you have heard the testimony of Mr. Messer. Is there anything you would like to comment on or disagree with? Same chance with you, Mr. Messer. You heard the testimony of Mr. Rebuck; anything you would like to comment on or disagree with?

Mr. MESSER. Obviously, we have conflicting testimony of the indicators of mine water problems, but I'm not sure that my further answer on that is possible since I have agreed in a confidentiality agreement not to disclose information.

Senator SPECTER. Well, Mr. Messer, I have grave doubts as to the validity of the confidentiality agreement, it sounds like a contract of adhesion to me. If you were bound by confidentiality, I don't think it would govern a Senate hearing. It wouldn't govern a Senate hearing, but I'm not going to pressure you on it.

Mr. MESSER. My response, Senator, is very simple, that there were indicators of severe water problems in this mine. My understanding is from sources independent from the miners themselves that these particular concerns have been relayed to the operators of the mine. So I can only say that based upon my investigation there were enough factors present here to cause an alert and an investigation to, into the location of these voids.

I mean, it's, I have not seen it physically yet, but apparently there is a ventilation shaft located within 50 to 100 yards of the place these men were rescued, and the only ventilation that that shaft could have provided was to the Saxman Mine, and that would be the encroachment, because that ventilation shaft was on property that was not part of the Saxman lease.

I mean, there are a lot of factors here that we can, you can always say that this is what the Government requires me to do and I did it and that is the end of it. But what I think Mr. Rebeck is essentially saying is that once Quecreek got the permit, we relied upon everything Quecreek did and we took that information and then we started the mine. I don't think that anyone else applied for a permit other than Quecreek, certainly Black Wolf did not.

Senator SPECTER. Mr. Messer, this subcommittee has oversight jurisdiction over MSHA and I have the confidentiality agreement and we will pursue that. I don't think it's an appropriate thing that you were asked to do and I don't think it is binding, but I can understand the constraints you feel. I won't press you to go beyond the confidentiality agreement.

That does not stop any of the miners from telling this subcommittee anything they wish to as long as they don't show us the statement. They are not barred from their own recollections in response to questions which the subcommittee will ask.

We are going to take a very brief recess so that I can talk to the miners about the testimony which has been given already in an effort to find out what more they can add to this record at this time.

Does anybody else have a comment? Mr. Ellis, you want to make comment?

Mr. ELLIS. No, I already made it, thank you.

Senator SPECTER. Mr. Main?

Mr. MAIN. Yes, I would just like to echo a problem explained by Mr. Messer. We have had a lot of difficulties with regard to the investigative process, we have had to sign confidentiality agreements, we were even barred from getting some of our own statement about mine disaster, even when the mining, that testimony be given to us. So there is a lot of problems. I just handled this.

But I think Quecreek represents just a tip of a bigger problem with respect to the Mine Safety Act. We would encourage your committee to look deeper into the many problems of mine safety.

Senator SPECTER. Mr. Yankovich, you can have the last word if you want.

Mr. YANKOVICH. Just outside the facts that I think we made light here today, but there was probably a lot of tell-tale signs that was not taken into regard by the mining company at this point in time, from what I can see, and they should have been.

Senator SPECTER. We are going to recess for just a few minutes. If the miners and their wives will go to the conference room I will be there.

The hearing will now resume. I have just been talking to a number of miners, some of whom got out early and some of whom were trapped. A number of them have stated their interest in testifying. So at this time I would like for Mr. and Mrs. Harry Mayhugh to step forward, Mr. and Mrs. John Phillippi to step forward, Mr. Robert Hileman to step forward, Mr. Frank Stewart to step forward, and Mr. David Petree to step forward.

Those are the individuals who have stated an interest in testifying, and if there are any others who would like to testify, simply tell Bettilou Taylor or one of my staffers and we will hear you.

Mrs. Mayhugh, we are going to start with you because you were the one that spoke up. So we will give you a chance to say first

what was on your mind and why you spoke up. As I said at the time, I thought it would be a good idea to have you speak, but I have a lot of people, and we need an orderly process, it is better to have you at the witness table. We are all interested in what you have to say. So the floor is yours.

**STATEMENT OF MRS. HARRY MAYHUGH, WIFE OF A MINER**

**ACCOMPANIED BY:**

**MRS. JOHN PHILLIPPI, WIFE OF A MINER**

**RONALD J. HILEMAN, MINER**

**HARRY B. MAYHUGH, JR., MINER**

**FRANK E. STEWART, MINER**

**JOHN R. PHILLIPPI, MINER**

**RYAN S. PETREE, MINER**

**DOUGLAS L. CUSTER, MINER**

Mrs. MAYHUGH. We were just wondering why when you do go to a meeting or something in the paper, it is always no comment or they don't have that information on file. We should be entitled to know all the details as they come about them.

When you find a map and they have their representative present, why shouldn't ours have been allowed to be there either?

I just want to make sure it's being run fairly the whole way with both sides, the mines and the miners, and I don't think it has been.

Senator SPECTER. Mrs. Mayhugh, I think you are entitled to know. There is something to be said for conducting an investigation and finishing it so you hear from all parties, but I do believe that there is a duty on the part of public officials to disclose the critical information as promptly as possible. One of the reasons this hearing is being held publicly is to bring it out.

Some people don't want to say, you can understand that, for a while, but I believe that regarding an incident from July, considering this is October—

Mrs. MAYHUGH. Yeah, how long do they have to keep denying, saying we don't have that information?

Senator SPECTER. It is something that is a great public interest and public concern and there are many miners who are underground who could benefit from what we are learning.

We have one other wife who signified an interest in saying something, so we'll go to the ladies first, Mrs. Phillippi, and hear from you.

**SUMMARY STATEMENT OF MRS. JOHN PHILLIPPI**

Mrs. PHILLIPPI. You were talking about all the money that you give for these inspectors in the mines. If they're doing their job, why did this happen? Isn't that what their job is, to protect these men? You know, aren't they supposed to inspect and know? You know, shouldn't someone have seen this? They were there the week before. Where did he go, what part of the mine was he in?

And there was water, because I know because my husband came home every night and his feet were froze. I know when he works in water and I know when he doesn't, I know.

Somebody is responsible for this, we just want to know who and what happened, and it can't happen again. This was a horrible, horrible ordeal. And I would never want someone else's wife to

have to sit there and not know for 3, almost 4 days, whether your husband's alive or dead. Whose job is it to make sure that the mines are safe and why wasn't it done, if there was inspectors there the week before? They talk about not having money but you're talking about billions of dollars, and you've given them more money and more money. If we don't do our jobs, we lose them; don't we?

Senator SPECTER. Mrs. Phillippi, you are right, if we do not do our jobs we do lose them. You raised very good questions and those precisely are the questions we are going to answer. What happened on the inspection the week before, what happened with the safety plan, what happened with the encroachment, what happened with the water. Those are all relevant questions and fortunately your husband was one of those who was trapped and got out, one of the lucky nine.

Mrs. Mayhugh, your husband was one of the lucky nine who got out also.

Mrs. MAYHUGH. And my father.

Senator SPECTER. And your father. Who is your father?

Mrs. MAYHUGH. Tom Foy. So it is my whole world down there, and yeah, I want answers.

Senator SPECTER. So you were lucky twice.

Mrs. MAYHUGH. I am very lucky twice.

Senator SPECTER. Those are the questions we're going to seek to have answered.

Let me turn now to Mr. Ronald J. Hileman. Mr. Hileman, I talked to you shortly after the incident, I called you up and got you on the phone.

Mr. HILEMAN. Right.

Senator SPECTER. Your phone must have been ringing off the hook.

Mr. HILEMAN. Yes, it was.

Senator SPECTER. I thank you for taking the call and I thank you again.

Mr. HILEMAN. Thank you for having us here.

Senator SPECTER. Mr. Hileman, in your own way, tell us what happened.

#### SUMMARY STATEMENT OF RONALD J. HILEMAN

Mr. HILEMAN. It started just like any other day, I mean, just an ordinary shift. You know, when we hit the water—

Senator SPECTER. Could you pull the microphone just a little closer to you, please?

Mr. HILEMAN. Right there?

Senator SPECTER. That's fine.

Mr. HILEMAN. There was a lot of questions answered here today that I think, you know, we never had the chance to do before. But they're saying that was a dry mine; it wasn't. The mine was very wet from the very beginning.

Senator SPECTER. Do you think the owners knew that?

Mr. HILEMAN. Well, the roof, when we first started in, that mine's roof was dry, we was getting water in on the bottom, we had some washouts. That could have been coming from the Saxman

Mine, I don't know, I am no mining engineer, I'm just a coal miner, I have no idea.

But there was a good many washouts on the bottom when we first started that mine, the roof was dry, it was sandrock. As we progressed in further, we run out of sandrock roof, we went into slate roof, and that's where we started having our water problems.

We went around a fault that we had hit previously to this, and where that fault, I don't know if that had anything to do with the Saxman Mine or not.

Senator SPECTER. Did you or do you know if any of the other miners told the company, Black Wolf, about the water conditions?

Mr. HILEMAN. The company knew about the water conditions. From the time we started first left section, we had water in the roof.

Senator SPECTER. When you say the company knew about it, why do you say that?

Mr. HILEMAN. We all, as far as our foreman, our boss, face boss, I mean, he knew, and I'm sure he told them.

Senator SPECTER. Who was your foreman?

Mr. HILEMAN. Randy Fogle.

Senator SPECTER. He knew?

Mr. HILEMAN. He knew that there was quite a bit of water in the roof. I was the bolter, that's what puts the pins in the roof and that's where we were seeing, again, quite a bit of our water problem from the roof.

Senator SPECTER. With respect to this issue of encroaching, Saxman coming over into land which really wasn't theirs—

Mr. HILEMAN. Right.

Senator SPECTER [continuing]. What is your view of that? Are you familiar with the encroachment problem?

Mr. HILEMAN. From what I was told there was encroachment from the old Saxman Mine.

Senator SPECTER. When did you learn about that encroachment, was it before July 24?

Mr. HILEMAN. No, since July 24 is when I was made known.

Senator SPECTER. You're a miner and you wouldn't necessarily be familiar with it, but to the extent that you are, had you heard about encroachment as a common problem?

Mr. HILEMAN. Oh, yeah, I've heard about it quite a different—some of the old timers. I live in a small town there just out of Somerset, Gray, almost all them small towns around the area was coal mining towns, Quecreek itself, Gray, Jerome, they all, that's how they sprung up, because of the old mines.

Senator SPECTER. So the encroachment is when a mining company goes into an adjacent land which is not theirs to mine the coal. It's pretty hard to detect that and you can't see that.

Mr. HILEMAN. Exactly, they have to find a way. The old timers there in Gray told me lots of times about how they mined coal, they knew they crossed their boundaries and everything, you know, they knew it. The roof was good, the bottom was good, the coal was there, well, let's take a little, what's stopping them?

Senator SPECTER. Take a little or take a lot?

Mr. HILEMAN. Sure, take a little, take a lot, take a whole lot, who knows. It's down under there, nobody sees. And, you know, I've heard about it quite often.

Senator SPECTER. When you knew about that encroachment, did that concern you that there might be a safety problem because the maps would be inadequate?

Mr. HILEMAN. It concerned me, yes, at that time, but you put your life in the Federal, State, and company's hands when you're under there, they are the ones that is supposed to keep you safe. Right?

Senator SPECTER. That's right.

Mr. HILEMAN. That's what your agencies are made for.

Senator SPECTER. That's right. You ask me a question, I will answer your question, that's right. I'm glad to answer a relevant question. Anybody who was underground as long as you were, I will answer your question.

Would you care to comment about the experience generally? I know you're under contract to Disney for a movie, I don't want to get into any of your proprietary rights, but do you care to comment about what it was like underground there for all those hours?

Mr. HILEMAN. Anybody that's never been underground don't really know what it's like. I could sit here for hours and try to—

Senator SPECTER. Mr. Lauriski wishes to depart for other commitments. I understand, Mr. Lauriski, and we excuse you at this time and we will be in touch with you later.

Go ahead, Mr. Hileman.

Mr. HILEMAN. Like I was saying, nobody that's ever been underground really don't understand what it's like to be under there. It's a hidden profession, nobody can drive down the road and see what we do every day. Very few people know what we do. It's a hard way to make a life, but we all have done it for so long we did it.

Senator SPECTER. How long have you been a coal miner, Mr. Hileman?

Mr. HILEMAN. 27 years. As far as the accident itself, I had started to say that it was just a normal shift, we started in, worked 3:00 to 11:00 shift that evening. And it was like at 8:45 that evening our shift was pretty much so over. I run twin boom bolter, I was the operator, Mr. John Unger was the helper on the machine, we was in number 4 entry bolting.

A few hours into the shift there, like I said about 8:45, Tom Foy come over past and said, we hit some water. At that time I didn't know how bad, how much or anything else. So we proceeded down No. 4 entry until we got to the feeder. That's where most of us met. We could look over into No. 6 entry and see that there was a lot of water coming in. It was, the seam in there is approximately around 50 inch, 48 to 50 inches high and the water was, it was up within probably a foot of the roof at that point.

Senator SPECTER. How did you feel?

Mr. HILEMAN. At that point I, you know, I never dreamt that we would be trapped, I figured we could get out, one way or the other, you know. In the 27 years I never went through anything like this, I never, never dreamt that we would do something like, you know, to be caught in such a situation.

But we proceeded down No. 4 entry to try to get out that way. The water kept getting higher and higher, it was very wild, very swift river.

Senator SPECTER. You say it was within a foot of the ceiling?

Mr. HILEMAN. Right.

Senator SPECTER. How much higher could it get and still have that air space?

Mr. HILEMAN. You still have that air space until it's to the roof, you know, I mean, you still got room to breathe as long as the water isn't to the roof.

Senator SPECTER. What was the highest the water got?

Mr. HILEMAN. It completely went to the roof down further, down in the mines. We were mining on an elevation there, steep incline, not a steep incline, but a gradual incline. The bottom part of the mines filled up with water first.

Senator SPECTER. When the water went to the roof, where were you?

Mr. HILEMAN. At one of the highest elevations in the mines, the highest elevation.

Senator SPECTER. So you had a little breathing room?

Mr. HILEMAN. Right, but it choked off the air from the outside. The mines runs on an exhaust fan.

Senator SPECTER. It shut off the air from the outside?

Mr. HILEMAN. Right, exactly, it choked it off.

Senator SPECTER. So you were able to breathe, but barely?

Mr. HILEMAN. Barely. At that point we was all gasping for air, you couldn't breathe through your nose, you couldn't get enough air in. Some was throwing up due to the bad air that was coming out of the Saxman Mine. It was very hard to breathe.

Senator SPECTER. You were trapped for more than 3 days, from 8:45 on July 24 the Wednesday through Saturday July 27 at 10:15?

Mr. HILEMAN. July 28.

Senator SPECTER. July 28?

Mr. HILEMAN. Yes, I come out around 2:15, yes, in the morning, 2:15 a.m.

Senator SPECTER. On July 28?

Mr. HILEMAN. Right.

Senator SPECTER. But you first had a knowledge that you were going to be rescued about 10:15 at night on Saturday the 27?

Mr. HILEMAN. Yes, I guess, I'm not sure on that, I don't know the exact time on that.

Senator SPECTER. Did you ever give up hope?

Mr. HILEMAN. Oh, sure, there was different times, I didn't think we was coming, there was different times, through the whole ordeal there was ups and downs, you know, our hopes was up, our hopes was down.

Senator SPECTER. What got your hopes up? I can understand what got your hopes down, but what got your hopes up?

Mr. HILEMAN. When we was running out of air we had proceeded to start building some flood walls to try to hold the water back from the highest elevation where we was trapped at. During that, they had drilled a six-inch air shaft down through, into an intersection, where we was working to build the walls, which that was a

good sign, they were bringing fresh air to us, and they knew pretty much where we was, that was a good sign.

Senator SPECTER. How did you feel when you got out?

Mr. HILEMAN. Words can't express that. I mean, if you've never been faced in a life and death situation then you wouldn't know what I was talking about. I mean, I take 1 day at a time, I just enjoy life more.

Senator SPECTER. Mr. Mayhugh, we heard from your wife testifying. Do you think that it was known that there had been encroachment and that the maps were unreliable and that water was a problem?

Mr. MAYHUGH. Yeah, I definitely know.

Senator SPECTER. Tell me why you say you definitely know.

Mr. MAYHUGH. Well, we was on our death bed down there. And at the time Randy Fogle, our boss, he told us 2 weeks prior to this he talked to Dave Rebuck and wanted to pull out of there because the conditions were bad.

Senator SPECTER. Who was it who said that?

Mr. MAYHUGH. Randy Fogle. Randy proceeded to say he talked to Dave 2 days before this, Mr. Rebuck, and Dave Rebuck said he was scared that we was getting up in there. So why would you say he was scared up in there if he thought we was 300, 400, 500 feet from the mine? Randy Fogle didn't tell us this until we were on our death bed. Not all of us heard it, but at least three or four heard the comment that he made.

Senator SPECTER. Mr. Fogle, what was his position?

Mr. MAYHUGH. He was our face boss, or section foreman.

Senator SPECTER. He was not one of the 18 in the mine, or was he?

Mrs. MAYHUGH. He was.

Mr. MAYHUGH. He was.

Mrs. MAYHUGH. He was the one that—

Mr. MAYHUGH. He was the one that told us when we was on our death bed, when we thought we only had an hour to live, I don't know if he wanted to clear his conscience or what it was, but he told us that.

Senator SPECTER. Mr. Fogle, though, is not here today?

Mr. MAYHUGH. No, he isn't.

Senator SPECTER. Mr. Fogle told you that he told Mr. Rebuck?

Mr. MAYHUGH. 2 weeks prior he wanted to pull out because he was loading a load of coal, the water was bad.

Senator SPECTER. How long before July 24 did Mr. Fogle say he told Mr. Rebuck?

Mrs. MAYHUGH. Two weeks prior to July 24. Then as I said, Mr. Fogle, when we was on our death bed he told us 2 days prior to the accident Dave Rebuck said that he was scared that we was up in there. So why would you say that?

Senator SPECTER. Mr. Rebuck said what again?

Mr. MAYHUGH. That he was scared that we was mining up in there.

Senator SPECTER. Mr. Rebuck was concerned that you were mining up in there?

Mr. MAYHUGH. Yes, that's what Randy Fogle told us.

Senator SPECTER. How long have you been in the mines, Mr. Mayhugh?

Mr. MAYHUGH. 5½ years, sir.

Senator SPECTER. How long have you been married to Mrs. Mayhugh?

Mr. MAYHUGH. 10 years.

Senator SPECTER. Children?

Mr. MAYHUGH. Two.

Senator SPECTER. What are your future plans, are you ever going to be a miner again?

Mr. MAYHUGH. No, definitely not. Another thing, okay, our company was going off in 1957 and they proceeded to mine up until 1964 at the Saxman Mine, so how can anyone issue a map or whatever knowing that there was, what, 6, 7 years of extra mining in there and say to their best knowledge that 1957 map is accurate? I mean, it don't take a rocket scientist to figure out in 7 years you can load a lot of coal out.

Senator SPECTER. So they used a 1957 map and they were mining at least until 1964?

Mr. MAYHUGH. That's the map that they've been talking about during the hearing.

Mrs. MAYHUGH. The one they found.

Mr. MAYHUGH. The one they found at the Windber Museum, and it was dated 1957, so they did 6, 7 years mining prior to 1964.

Senator SPECTER. Are you familiar with this encroachment or bootlegging issue?

Mr. MAYHUGH. No. They showed us the map that they found or whatever, and if they would have had the accurate map, we would have never cut into it because it looked like the old Saxman mapping was accurate.

Senator SPECTER. That the map was inaccurate?

Mr. MAYHUGH. That the new one they found was accurate. We would have never cut into the one that we cut into if they had the upgraded map.

Senator SPECTER. Mr. Stewart, you had a comment about that?

Mr. STEWART. He said that new map was accurate and that's not even accurate. Because when they looked into that hole it showed a lot more than what that map showed.

Senator SPECTER. When you say the new map, what was the date of that map?

Mr. STEWART. 1964.

Senator SPECTER. But that map was not accurate either?

Mr. STEWART. No.

Senator SPECTER. Why do you say that, sir?

Mr. STEWART. When the inspectors looked into that hole where they cut through, there was a, where they cut into was a rut driven off to the main, that one main there. Plus where they looked up through there was a great big opening, and according to the map there was roof stripping and that was all mined out.

Senator SPECTER. Mr. Stewart, you were one of the miners who got out early?

Mr. STEWART. Yes.

Senator SPECTER. Tell us what happened with your group.

Mr. STEWART. I was the foreman of that—

Senator SPECTER. Pull the microphone a little closer to you.

Mr. STEWART. I was a foreman of the other crew that night. At that time we started around 8:00, I did my preshifting in that section that night and I had to do all the outlying area preshifting there.

So I proceeded to left section, left my crew there and told them what needed to be done and that there. I proceeded down No. 5, 5 main to make my examination. And I come to 1 left intersection there and I was heading up into 1 left and I was probably about one third of the way up into that section where the accident happened, and I was going up to the common entries which leads to No. 5 entry.

I stopped there and checked the first pump and the intake, the pump in the intake was No. 7 entry. So I stopped there and I crawled through a man door, walked across No. 6 entry to No. 7 entry, I still can remember putting a date on there at 8:50, and could hear this noise and that there. The noise kept getting louder and louder and louder.

Senator SPECTER. What kind of a noise was it?

Mr. STEWART. It was just like a big grumbling sound.

Senator SPECTER. Water coming?

Mr. STEWART. At first I thought it was a scoop coming down through, it was making like a noise, then all the sudden it got louder. When I put the date on the date board at 8:50, the man door that I came through slammed shut. So I knew there was something up then.

I walked over to the No. 6 entry, when I got over there the noise was so loud, it's hard to describe.

All of the sudden this big forced air came back over me and almost knocked my helmet off my head. I thought there was an explosion up in that section. I figured I was done then, because it would take all the oxygen out of the air.

Senator SPECTER. You say you figured you were done?

Mr. STEWART. Yes.

Senator SPECTER. You mean done for?

Mr. STEWART. Yeah, I figured I would be dead right there because it would take all the oxygen out of me.

So when I looked up, I seen all that water coming at me. I hurried up and run to that man door, and I got it open, I jumped through it.

As soon as I, as soon as I got through the man door I slammed it shut and there was discharge that goes through that wall right there. And all that water come down through sucked that line through right now. All the water started coming seeping through the wall right there.

So I hurried up and jumped on my golf cart and I got it turned around and I went down over the hill as fast as it would go. I knew I didn't have much time but I stopped at the belt drive and I was calling for my guys to get the hell out of here, to let them know what happened.

Senator SPECTER. You say to your guys; how many men were there?

Mr. STEWART. There was eight on my other crew.

Senator SPECTER. You were the nine who escaped at that time?

Mr. STEWART. Yes. But I kept calling, I called and I was calling for these other guys to see what happened. I kept calling and calling and the outside guy got on there and said they already got ahold of these guys.

When he said that all that water was coming down, right there is a big dip right in there. I knew if I didn't get out of there, I would be trapped. So I had to hurry up and jump on the golf cart again.

I went flying out around there and later on Larry Summerville said that he seen me flying out around there and he said he was only a second behind me and when he got there it was already flooded to the roof. He thought that I was underneath all that.

So I went down to the 5 main, I was calling my guys and calling and calling and calling and nobody would answer. So pretty soon Larry Summerville came through the intake wall, he kept yelling, he said Chad and I made it, Chad and I made it. He said the other guys behind me, he said, I don't think they made it. If you would have seen the look in his eyes that night, it looked like you seen a ghost.

So we started talking for a little bit and we hollered outside to go and get ahold of the mine foreman and the owners and all that to tell them what happened.

Probably about a minute or so later we heard voices down around the corner. We walked down around here and got the rest of my crew out. They said they come through there, the first travel way, it was already flooded shut, they couldn't get through and they had to keep backing up and find an intake. And he said when they come through here, a couple of guys, that's when I talked to Pete, and the other guys had to grab them, the water was up to their neck then.

We kept talking there for a while and we figured we better get out of there, because we didn't know how far the water was behind, it went upgrade.

So we got outside and both doors was hanging wide open, the doors into the common entry that normally stay closed, but the force of that air must have forced those doors open.

We stayed outside, kept waiting and kept waiting for the other guys to come out, these other nine trapped guys, and we waited for probably 10, 15 minutes, figured we better get out in case something happens.

So we went up to the main office, shower house there and that's where we spent probably till about 4:00, 5:00, 6:00 in the morning trying to help out with whatever we could do.

Senator SPECTER. How did you feel when you got out?

Mr. STEWART. I think I was just numb, I didn't know what I felt, I think we all was numb. I think we were just glad to be alive.

Senator SPECTER. Thank you very much, Mr. Stewart. Mr. Phillippi, we heard from your wife. How long have you two been married?

Mr. PHILLIPPI. 10 years.

Senator SPECTER. How long have you been a miner?

Mr. PHILLIPPI. 12½ years.

Senator SPECTER. Children?

Mr. PHILLIPPI. Yes, one, a boy, 12.

Senator SPECTER. Does your wife give you a hard time for being a coal miner?

Mr. PHILLIPPI. She does now, I ain't going to be one anymore.

Senator SPECTER. Did she before?

Mr. PHILLIPPI. No, she, she was pretty okay with it, we thought we could trust.

Senator SPECTER. Are you a native of the area of Somerset?

Mr. PHILLIPPI. Yes, I am.

Senator SPECTER. Go to school there?

Mr. PHILLIPPI. Shade Central City.

Senator SPECTER. Are you going back into the mines?

Mr. PHILLIPPI. No, I couldn't do that to my family again.

Senator SPECTER. You don't have to now that you got the Disney contract do you?

Mrs. PHILLIPPI. That's not enough to live on now, think about that.

Senator SPECTER. Mrs. Phillippi, what did you say?

Mrs. PHILLIPPI. That's not enough to live on, think about that.

Senator SPECTER. Isn't it?

Mrs. PHILLIPPI. Not to raise a 12 year-old.

Senator SPECTER. Maybe Mr. Messer will get you a new deal.

Mrs. PHILLIPPI. We're pretty young, you know, we're the youngest two couples. The other guys, our kids have a long way to go raising them.

Senator SPECTER. I'm sorry to hear that's not enough to live on.

Mrs. PHILLIPPI. I wish it was.

Senator SPECTER. Maybe the next contract—

Mrs. PHILLIPPI. It will pay for college.

Senator SPECTER. What do you plan to do, Mr. Phillippi?

Mr. PHILLIPPI. I ain't decided right at this time till I get some things straightened out.

Senator SPECTER. Are you thinking about being a Mr. Goodwrench?

Mr. PHILLIPPI. I'd like to be a GM man.

Senator SPECTER. You got a hat on that says GM Goodwrench service. Do you get a premium for being on television wearing that hat?

Mr. PHILLIPPI. No, I didn't even get a truck yet.

Senator SPECTER. Mr. Mayhugh, what's the New York Fire Department, Police Department doing for you, wearing an NYPD hat?

Mr. MAYHUGH. We was just up in New York and I picked the hat up.

Mr. PHILLIPPI. Mr. Specter, I would like to thank you for keeping this public because everybody needs to know about this because I'm afraid if it's hidden, they're going to sweep it under the table, things are going to be hidden and they're not going to know what happened.

Senator SPECTER. Mr. Phillippi, nobody's going to be sweeping this under the table.

Mr. PHILLIPPI. So it doesn't happen again, I'm glad you're with us. And as far as—this company was aware of water.

Senator SPECTER. Why do you say that? You say the company was aware of the water. Why do you say that?

Mr. PHILLIPPI. Because I was a miner operator and previous to this 2, 3 weeks, we were loading a lot of coal. Production cut into half, cut halfway, we slowed way down, the problem was there's water coming out of the roof, the bolters couldn't drill to keep up, everything was sloppy wet, they know the problem, we told them. I just, it's unbelievable that they can sit there and lie about it.

Senator SPECTER. Well, I can see how you feel about that, Mr. Phillippi. It's a very emotional situation when your life is put at risk as yours was. Mr. Petree.

Mr. PETREE. Yes, sir.

Senator SPECTER. Where were you when all this happened?

Mr. PETREE. Well, let me put it this way. I want to get one thing straight first. These people here—

Senator SPECTER. Get it straight on mike, will you, please?

Mr. PETREE. These people here are saying—

Senator SPECTER. Now wait a minute, we have got to get it straight. Mr. Hileman, you can change seats with Mr. Petree.

Mr. HILEMAN. Yes.

Senator SPECTER. We have got to have a transcript of this. I have already been asked if you will get a copy of the transcript, and the answer is yes. We have a court reporter here from the Senate, who is taking all this down. Anybody who wants to get a transcript can get a transcript. But the only way I can get you a transcript, Mr. Petree, is if you speak into the microphone; okay?

Mr. PETREE. Okay.

Senator SPECTER. Go ahead.

Mr. PETREE. The only thing I want to, I was one of the nine that escaped, okay. And I hear people talking, like I heard one gentleman said that we walked out of that mine, which we did. Some people, I read in the paper, we ran out of that mine, which we didn't. We struggled the whole way out of that mine that night. Our lives was in jeopardy too, I mean, we was scared. I prayed going out of there because I didn't think I was going to make it.

Like they said, that some of the guys got their feet swept out from under them. My one buddy he got his feet swept out from under him, I grabbed ahold of him, I might have saved his life, I'm just hoping I did.

But a lot of people think that we ran out of that mine, we was cowards, we ran home. But we stuck it, we stayed for hours and hours and hours to save these guys, we stayed and pumped for hours.

So, I mean, I just—if it had gone down in history that we ran out of that mine, it ain't going to get it, because we almost died and we struggled getting out of the mine.

Senator SPECTER. What do you think about the issue of the company knowing about the water danger?

Mr. PETREE. Well, just like these guys said that we, we was down in seconds, we had water in the roof too. So, I mean, I don't know if that mine came down that way further, I don't know, and we was hitting water in the roofs. So it was wet down there. I mean, I don't know whether the maps shows down that way or not.

Senator SPECTER. Mr. Custer, we haven't heard from you yet. Do you want to change places with Mr. Petree so you can speak into the microphone? And we'll put you in the transcript.

Has anybody made the bad pun that it was almost Custer's Last Stand?

SUMMARY STATEMENT OF DOUGLAS L. CUSTER

Mr. CUSTER. Nobody would be that ignorant.

Senator SPECTER. Well, there's always one in the crowd. We have got to have a moment or two of lightness, this is the heaviest hearing I've ever been to and I've been to a lot of hearings.

Mr. CUSTER. That's the type of guy I am. Hello, my name is Doug Custer, and I'm just a common man. I've had 26 years of mining experience. This was a disaster and that's all we can say about it, it's an unfortunate mishap. As miners we're trained to ventilate, deal with bad air, deal with water, this mine is considered a damped wet mine, but we have faith and trust in the Department of Protection, MSHA Miners and the company which we work for.

The biggest question is that there are two maps that's supposed to be sealed and assigned to repositories in Harrisburg and wherever else, and it seems like this was not done. I think the law was passed in 1961 where there has to be closure maps.

Senator SPECTER. You think those maps were inadequate?

Mr. CUSTER. I think, you know, we'll let the investigation—

Senator SPECTER. You think the company knew about the maps being inadequate?

Mr. CUSTER. The company, when they applied for the permits, they do everything that they can do to their knowledge, and they were, you know, everybody—

Senator SPECTER. So you think they operated in good faith?

Mr. CUSTER. I think, yes, I think they did.

Senator SPECTER. How about the mine inspectors, what do you think about that?

Mr. PETREE. They're straight shooters. If you're doing something wrong, they're going to—

Senator SPECTER. Both Federal and State?

Mr. CUSTER. Exactly, they do their job to the best of their ability, we do our job to the best of our ability. We have the right to a safe work place, we depend on the DEP, we depend on MSHA, we depend on the mine management, you know, we all work together. This whole rescue operation was a team effort, you know, you can't pinpoint it on some surveyor, you can't pinpoint it on a higher-up in the State, or a higher-up in MSHA.

I had a speech, but I blew it because I speak from the heart, you know. There are just so many questions that need answers for us. And that this mine accident doesn't happen anyplace else in the United States or even in the world, you know. I almost lost nine of my best friends down there and when this happened, you know, when we had to go over the intake, you know, the water was probably about 18 inches high when we was riding the main trip out, we went over to the intake. And to see that roll and to see the water in there, we had no idea what we were going into.

We got down on our hands and knees because you had to, it was probably about 34, 36 inches high right there. It was either get down and get wet or you're not coming out alive. It is as simple as that. That is what we had to do. Every miner here did what they had to do to save themselves and save everybody else.

When we got outside we waited and waited and waited, and we went up on the hill. Because, you know, once the belt sensor stopped saying that there was a dangerous condition, we knew that there wasn't anything we could do right then and there in the pit, we had to go up onto the hill. We were still in wet clothes, soaking wet. When we were escaping, my friend Joe Kostyk and I, we were more or less the leaders of the pack making sure that everybody was coming through. When that water was coming through, it sounded like Niagara Falls. I mean the water was so swift that it picked me up, Joe up and a number of guys off our feet. And it took my hat off, my glasses off and it was cold, you know.

But we had no idea what was taking place, we just got the word to get out of the mine, water is on its way. And I even joked, I said, all right, we got an early quit. We had no idea that this was as massive as it was.

We stayed there, we stayed at that mine for 14, 16 hours after this ordeal, I was sent over with the families, and that was probably the hardest thing that I ever had to do other than bury my dad.

Like I said, there is so many questions that need addressed. Why weren't the closure maps submitted, you know? And when did the mine close? The time differences of the map, it's so coincidental that a month before this accident happened that they find something down in Windber Museum, you know, somebody's not doing their homework.

You know, like I said, I'm just a common man, I depend on DEP and MSHA and company officials. I'm not here to drag anybody down, you know, everybody has a job to do and thank God that everything took place the way God wanted it or this would have never happened.

Senator SPECTER. Mr. Custer, we will do our best to answer those questions. Anybody else have anything they would like to add?

Mr. STEWART. I would just like to add, know why the State never had those two maps, the final maps at that mine that, in their possession?

Senator SPECTER. Why they didn't have the maps?

Mr. STEWART. The owner of that mine was supposed to submit two final maps at the Saxman Mine.

Senator SPECTER. We'll try to find the answer to that. Mr. Hileman, do you have one last comment?

Mr. HILEMAN. Yes. One thing, one of the gentlemen said here a little earlier, this same type of accident happened in 1977 in an anthracite mine. How many times does it got to happen before they do something? There was nine lives claimed at that one, there could have been 18 here. They're still not doing anything, you know.

Senator SPECTER. The object of our inquiries will be to see to it that something is done and the Appropriations Subcommittee is prepared to fund what is necessary to provide for mine safety, that is our job.

I want to thank you very much, ladies and gentlemen, for coming.

Mr. PHILLIPPI. Mr. Specter, one other thing. I would like to know how could a permit be issued off of a 1957 map whenever it is known that they mined that in there till 1962, 1963, or 1964? I mean, that's 5 years of mining where nobody knowed where we was going. And, you know, how can you say, well, okay, yeah, 1956, years, and you're just going to not know where it's at and send us guys in there without knowing what's there?

Senator SPECTER. Mr. Phillippi, we will pursue that question as well as the question as to the mine officials knowing about the water, knowing about the danger, staying in on the mine. Those are all questions which will be answered on this matter. Mr. Mayhugh, do you have another statement?

Mr. MAYHUGH. It's just to thank everybody. I mean, I figured this would be the best time, because I mean we've got letters from all over the world, the United States, how much this really affected people. I mean, they sent us cards and Psalms and I would just like to thank everybody for their prayers that they had for all 18 of us miners.

Senator SPECTER. Thank you all very much. I want to thank the city council, this is the Anthony C. Priscella Chamber. I thank staff and all those who have been here, and it's been a very, very informative hearing.

I said a few moments ago, it's a very heavy hearing, but because of what happened to the 18 of you and your wives and families, and what happened to the entire community, it's certainly odd that all of this would have happened 13 miles from Shanksville where Flight 93 went down on September 11, and less than a year later on July 24 this occurred. But these are important questions to be addressed by the Federal Government, which our subcommittee will do, and by the State government. There are people who will have to answer for what happened here, on the maps and the warnings. To what extent there is liability that will have to be determined when we review the record. Of even greater importance, to prevent a recurrence, and we will work on that.

#### CONCLUSION OF HEARING

Thank you all very much for being here, that concludes our hearing.

[Whereupon, at 12:25 p.m., Monday, October 21, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]