



July 14, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Designate New Chairman to Federal Mine Safety and Health Review Commission

Dear Mr. President:

We are writing to bring your attention to an urgent matter facing the Federal Mine Safety and Health Review Commission (FMSHRC), the independent agency charged with deciding administrative mine safety cases. The FMSHRC is laboring under an enormous backlog – 13,000 cases – due to a surge in case filings in the last three years and a meager budget that has rendered the agency incapable of coping with the workload. We urge you to quickly appoint a new chairman to the commission. It is within your power to designate one of the seated commissioners as the new chairman.

Chairman Michael Duffy, an appointee of the previous administration and former deputy general counsel for the National Mining Association, has a record of submitting appropriations requests to Congress that are significantly lower than the actual amount needed for the commission to operate effectively. For example, despite its deeply burdensome backlog of cases, the commission under Duffy's leadership requested only \$9.8 million to function in FY 2010. Duffy requested just \$8.6 million in FY 2009 and \$8 million in 2008.

To further demonstrate the impracticality of the chairman's budget recommendations, the Occupational Safety and Health Review Commission (OSHRC) serves a function similar to that of the mine safety commission, but the OSHRC's budget has remained significantly higher in the past several years despite the fact that its workload is considerably smaller than the mine safety commission's. While the FMSHRC budget was \$8.6 million in 2009, the OSHRC was allotted \$11.1 million. At the same time, the mine safety commission's backlog of cases since 2005 has averaged 6.5 times more than the OSHRC backlog. By the end of FY 2010, the mine safety commission's backlog (19,359 cases) is expected to be 26 times larger than the OSHRC's (739 cases), but its budget is expected to be \$2 million lower.

The commission's 13,000-case backlog represents a 600 percent increase since the passage of the Miner Act three years ago, when Congress strengthened mine safety standards after a string of preventable mining tragedies that caused multiple injuries and deaths to miners. While the enforcement agency, the Mine Safety & Health Administration (MSHA) has increased its activity and cited mines for safety violations, mine operators have been more aggressive in disputing the penalty assessments, leading to the escalating number of cases before the commission. Meanwhile, companies charged with safety violations are using delays in an attempt to avoid paying penalties prescribed by the new law. This is not what Congress had in

mind when it passed the Miner Act.

You recently nominated Joseph Main, a former miner, to head MSHA to enforce the new law and carry out the agency's mission. It is now time for new leadership at the mine safety commission – one who will consider and address its needs, including its evident lack of resources. Please appoint a new chairman to the Federal Mine Safety and Review Commission immediately.

Sincerely,



David Arkush
Director
Public Citizen's Congress Watch



Christine Hines
Consumer and Civil Justice Counsel
Public Citizen's Congress Watch