

**Utah Mine Safety Commission
Gene E. DiClaudio, President
Canyon Fuel Company, LLC**

Chairman Matheson and members of the Utah Mine Safety Commission (Commission), my name is Gene DiClaudio. I am the President of the Canyon Fuel Company (Canyon Fuel), a subsidiary of Arch Coal, Inc. (Arch). Canyon Fuel operates three underground mines in Utah. Our Dugout Canyon, Skyline, and Sufco mines employ approximately 800 residents of the State of Utah.

We've been asked to comment today on the important issue of mine safety. In particular, we've been asked to share our opinion as it relates to Utah's role in the areas of: 1) safety education and training, 2) mine safety enforcement, 3) mine plan review and approval, 4) mine emergency response, and 5) major mine accident investigations. We appreciate the opportunity to discuss our views with the Commission.

Safety is a Value at all of Arch's subsidiary operations. Our foundation principle is that "everyone goes home in the same condition they reported to work, **Injury Free.**" **Safety is at the Core of every decision we make and every action we take.** Our three Utah operations demonstrate their commitment to this critical safety principle every day.

Our mines are considered Industry leaders in safety. One example of their success is their year-to-date total incident rate of 1.84. This is about 74% better than the industry average for underground mines. We are proud of the strong safety culture created by our employees. We are particularly proud of our Skyline Mine which was recognized by the Mine Safety and Health Administration (MSHA) in 2006 as the safest large underground mine in the United States.

Within this context, we applaud the Commission's efforts to improve mine safety in Utah. Our company, and our Industry, should never be satisfied until we reach our goal of zero injuries. We hope the comments we offer today will serve to contribute to the Commission's efforts and represent another step in our journey to an **Injury-Free Work Environment.**

Education and Training

Well-trained, experienced miners are key to an effective safety process. Our employees are the most significant factor contributing to our safety success at Canyon Fuel. One major reason we've made progress can be attributed to the safety training we provide our employees. In this area, we go above and beyond the minimum requirements required by the regulations.

At our operations, in addition to the training required by the regulations, all employees receive safe operating procedures training with an emphasis and focus on the specific jobs they perform. Our mine rescue teams also train more hours than is required by the regulations.

All of the Canyon Fuel management staff attend safety leadership training and all employees at our mines participate in behavior-based safety training. This training focuses on teaching employees how to recognize situations where there is exposure to injury and empowers them to eliminate or minimize the exposure. It also teaches them to recognize and eliminate "**At Risk**" Behaviors. We believe this approach will eliminate injuries.

Another important factor in improved safety at our mines is our engineering professionals. Our mines are safe and efficient because they are designed by qualified mining engineers. Our company makes every effort to recruit and retain high quality professional mining, electrical, and mechanical engineers. We also consult with technical experts familiar with the unique characteristics of Utah's mines. We utilize state of the art methods to design our mines with safety as the key driver.

Going forward, our ability to continue to improve our safety performance will depend on our ability to maintain a core of qualified mining engineers at our operations. It will also be influenced by our ability to train our miners to recognize, eliminate, and minimize exposures as well as eliminate "At Risk" behaviors.

In our opinion, continued safety improvements at Utah's mines will require an investment in human capital. We believe that this is one area in which the State can help. The State can make a difference by expanding its mining-related education and training infrastructure.

Our Industry is undergoing a major demographic transition. Many of our experienced miners are approaching retirement. We are also hiring new miners. In the past two years alone, Canyon Fuel has hired 266 new employees. We expect this trend to continue in the foreseeable future.

This exodus of experienced miners and influx of new miners represents both a challenge and an opportunity. We have to fill the void created as our experienced miners approach retirement. We also have an opportunity to provide improved technical and safety training for their replacements. If we take advantage of this opportunity, we can improve our existing skill base and simultaneously improve safety in Utah's mines.

The mining industry provides good employment opportunities for the residents of Utah. The jobs we provide are high skilled. They are also highly compensated. They help provide families with a good standard of living and add significant economic value to the rural areas of Utah. As a result, we feel that investing in the Industry's human capital by providing funds for state of the art training will pay dividends.

From a mine safety training and education standpoint, Utah's infrastructure has a strong base. The mining engineering and safety programs available through the University of Utah and the Western Energy Training Center provide a solid foundation to build upon. These institutions have a reputation for providing high quality education and training for individuals interested in employment in the mining industry. We support increased funding for these institutions to help them meet the Industry's human resource needs. In our opinion, an investment of this type will improve Utah's competitive position by strengthening the technical and safety skills of our workforce. Investing more money in these institutions would be money well spent.

In recent years, mining engineering students graduating from the University of Utah have declined dramatically. Only six mining engineers graduated from the University's Mining Engineering Department during the autumn semester of 2006 and the spring and summer sessions of 2007. Three more should graduate between completion of this autumn's semester and the spring and summer semesters of 2008. No graduate students completed their studies during the semesters of the autumn of 2006 through the summer of 2007. Six graduate students could complete their work either by the end of next spring or summer.

In order to operate safely, mining companies need competent professional mining engineers. We can and must do more to meet the increased demand for these much sought after professionals. In particular, we need to fund increased post-graduate research that focuses on the unique characteristics of Utah's mines. It is prudent that the State of Utah, in partnership with the industry, support efforts to increase both enrollment and faculty in the University's mining engineering programs.

We also see value in providing additional financial support for the Western Energy Training Center, and the College of Eastern Utah. These institutions provide a solid foundation for increased education and training in the skilled mining and technical support jobs vital to the safety and health of our workforce. Given the significant demographic changes we face, we have to equip these schools with the resources to do more.

The safety culture of Utah's coal mining industry is strong. We need to build upon that strength by improving the technical and safety skills of our workforce. The Commission can take a positive step in that direction by recommending funding to enhance the education/training infrastructure currently provided by Utah's vocational, community college, and university institutions.

State Mine Safety Enforcement Program

In the aftermath of the Crandall Canyon tragedy, a few individuals have advocated reestablishing a Utah mine safety enforcement program. **Canyon Fuel believes this is both unnecessary and premature.**

Recent mine disasters in West Virginia, Kentucky, and Utah have captured the nation's attention. Media coverage of these events, however, has largely ignored the health and safety improvements realized by the Coal Industry since passage of the Federal Mine Health and Safety Act of 1977 (Mine Act).

Since 1977, the Non-Fatal Days Lost (NFDL) incident rate for coal mines has improved by 57%, the Industry's Total Injury incident rate has improved by 53%, and the number of fatalities per year has decreased by 52%. According the Bureau of Labor Statistics (BLS), coal mining is not even among the top ten (10) most dangerous occupations in America. Pilots, truck and taxi drivers, loggers, fisherman, roofers, and other occupations face greater on-the-job risks than coal miners.

The Mine Act established a solid foundation for a nationwide safety and health program for miners. The program is administered by the Mine Safety and Health Administration (MSHA). As the Commission is aware, the Mine Act was amended in 2006 by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). Since the enactment of the MINER Act, companies who are affiliated with the National Mining Association (NMA) have invested over \$250 million in new health and safety improvements.

MSHA has an active presence in Utah. As of November 30, 2007, MSHA carried out 590 inspection days at the three Canyon Fuel operations in Utah. We have at least one (and normally multiple) MSHA inspector(s) at our Utah mines every day. This far exceeds the regulatory presence of the

Occupational Safety and Health Administration (OSHA) at general industry facilities covered by the Occupational Safety and Health Act.

MSHA is also increasing their enforcement presence in Utah, as well as on a national basis. In recent months, the Agency has hired approximately 170 new mine inspectors, nationwide, who are at various stages of their training. In the Price, Utah field office alone, inspector staffing has increased significantly from 11 to 17 individuals (including four trainees) assigned to inspect Utah's eight active underground coal mines.

In our opinion, a Utah mine safety enforcement program would only duplicate the existing strong federal regulatory process. Further, even a limited Utah mine safety enforcement process, one that reviewed federally required safety-related mine plans, would be difficult to staff. As previously mentioned, there is a limited pool of qualified mining engineers and mine health and safety professionals. Establishing a state enforcement agency would pull from this limited supply of qualified professionals. It would have an adverse impact on the pool of qualified professionals available to MSHA and the private sector.

Unlike general industry, mining is a dynamic ever-changing process. To deal with this process, MSHA has developed a complex set of federal safety and health regulations. **A state enforcement program would unnecessarily duplicate federal regulation.** If the state becomes involved in the mine safety plan approval process, it would impede the effectiveness of a federal process that is already time-consuming.

Some eastern states, such as West Virginia and Kentucky have their own mine enforcement agencies and regulations. These states have many more underground coal mines than Utah. They also have higher injury incident rates than Utah's underground mines.

The existence of State mine enforcement programs in West Virginia and Kentucky did not prevent the Sago, Alma, or Kentucky Darby disasters. The West Virginia and Kentucky programs both require underground mine operators to submit mine-specific safety plans for approval. In both States, however, they merely adopt roof control and ventilation plans approved by MSHA.

As a result, we question the value of establishing a dual enforcement agency. In our opinion, a duplicative set of State regulations would not add value to the safety process, nor would it represent a prudent use of the State's tax dollars. In our opinion, more value would be gained by investing these dollars in safety-related education and training.

Canyon Fuel also maintains that reestablishing a state mine safety agency is premature. We share the Commission's desire to understand the underlying factors that contributed to the Crandall Canyon disaster. We feel strongly that these factors need to be identified and addressed. If it is determined that there is a flaw in the MSHA plan review/approval process, that flaw needs to be fixed.

We feel strongly, however, that we need to select a remedy that is appropriate for the problem. It's imperative that any solution implemented must address the underlying root causes contributing to Crandall Canyon. Establishing a state mine safety enforcement program, or a dual safety-related plan approval process before a thorough investigation of the Crandall Canyon tragedy is completed is premature. **In the end, having one effective mine safety enforcement program and mine-specific plan review process would serve to improve mine safety much more than two duplicative processes.**

At present, multiple investigations of the Crandall Canyon disaster are underway. MSHA, the Department of Labor, and Congress are all involved in investigating this devastating event. Those investigations are likely to determine if any weaknesses exist in the current federal mine safety enforcement system and identify specific actions required to address them. They will also call attention to the manner in which MSHA enforced the Mine Act and whether this contributed to the disaster. These investigations will likely produce recommendations to strengthen federal mine safety requirements and/or improve the manner in which MSHA enforces regulations. As a result, we urge the Commission to avoid "rushing to judgment" and to wait until the factors contributing to Crandall Canyon are clearly identified. Let's make sure we select the appropriate corrective action.

The Commission also needs to be mindful that Congress is considering additional mine safety legislation. The Supplemental MINER Act (S-MINER Act), H.R. 2768, was approved by the U.S. House of Representatives Education and Labor Committee on October 30, 2007. If approved by Congress, the S-MINER Act will create another layer of safety regulations. While we oppose the S-MINER Act, we recommend that the Commission monitor the outcome of this legislation. The Industry needs time to comply with the MINER Act. We will also need time to adjust to any potential new requirements that may be created by the S-MINER Act. Adding another layer of state requirements would only further complicate the process.

Mine-Specific Safety Plan Review and Approval

As the Commission is aware, the Mine Act requires operators of coal mines to develop and submit mine-specific safety plans to MSHA, which the Agency reviews and approves. The most important of these mine-specific plans include provisions for: 1) roof control, 2) mine ventilation, methane and dust control, and 3) emergency response.

The process involved with developing, submitting, and approving these plans is complex. The substantive requirements for each plan are highly technical in nature. Establishing and approving each plan involves a dialogue between the Operator's and Agency's technical experts. The process involves consultation, discussion, and negotiation. It is intended to result in a mutual agreement as to the terms of a particular plan. An agreement that addresses mine-specific safety conditions at each particular mine.

If the parties are unable to agree on the terms of a plan, a procedure has been established to resolve disputes. Conflicts may be submitted for resolution to the Federal Mine Safety and Health Review Commission (FMSHRC). Once a plan is approved, it becomes a requirement at that particular mine. The plan's provisions are enforceable at that mine as mandatory safety standards.

In addition to the initial mine-specific safety plans and the regularly scheduled six-month plan reviews, MSHA often requires intermittent changes to address non-routine issues. It is not unusual for MSHA to require an Operator to change a roof control or ventilation plan. When this occurs, MSHA and the Operator must renew the entire mine-specific plan development process.

A required change in a mine-specific safety plan is normally time sensitive. These changes are often related to a safety-related matter that must be resolved quickly. **The heart of our concern with a state mine plan approval requirement resides in the time sensitive nature of the process.**

A duplicative state plan process may create conflicting requirements with the MSHA mine-specific plans. Our concern is that this circumstance would require mine operators to spend time going between the State and MSHA to resolve conflicting requirements and delay implementation. This delay would diminish coal miner health and safety and could create confusion regarding adherence to the plan. On the other hand, if Utah adopts a process similar to West Virginia and Kentucky, and merely adopts the MSHA-approved roof control and ventilation plans, no value is added to the process by having a State mine plan review.