

MINE SAFETY AND HEALTH ADMINISTRATION
PUBLIC HEARING
30 CFR Section 75.403

Emergency Temporary Standard
Maintenance of Incombustible Content of
Rock Dust in Underground Coal Mines

Tuesday, October 26, 2010

Marriott St. Louis Airport
10700 Pear Tree Lane
St. Louis, Missouri

Reported by:

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Ms. Patricia W. Silvey, Director, Office of Standards and Regulations, U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Arlington, Virginia 22209.

Ms. Deborah K. Green, Senior Attorney, Mine Safety and Health Division, U.S. Department of Labor, Office of the Solicitor, 1100 Wilson Boulevard, Arlington, Virginia 22209.

Mr. Gregory W. Fetty, Staff Assistant, U.S. Department of Labor, Mine Safety and Health Administration, 604 Cheat Road, Morgantown, West Virginia 26508-4210.

Mr. Mario V. Distasio, Chief, Economic Analysis Division, Office of Standards, Regulations & Variances, U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Arlington, Virginia 22209.

Mr. Kevin R. Burns, Educational Policy and Development, U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, Arlington, Virginia 22209.

1 MS. SILVEY: Good morning. My name is
2 Patricia W. Silvey and I am the director of the Mine
3 Safety and Health Administration's Office of
4 Standards, Regulations and Variances. I will be the
5 moderator of this public hearing on MSHA's ETS on
6 Maintenance of Incombustible Content of Rock Dust in
7 Underground Coal Mines.

8 On behalf of Assistant Secretary Joseph A.
9 Main, Assistant Secretary of Labor for Mine Safety and
10 Health, I want to welcome all of you here today. At
11 this point, I would like to introduce the members of
12 the MSHA panel:

13 To my left is Kevin Burns who is with the
14 Office of Educational Policy and Development;

15 To my immediate left, Gregory Fetty who is
16 with the Coal Mine Safety and Health;

17 And to my right, Deborah Green, who is our
18 attorney on the project and with the Department of
19 Labor Office of the Solicitor of Mine Safety and
20 Health Division;

21 And to her right is Mario Distasio who is
22 the chief economist in my office.

23 This is the first of four hearings on the
24 Emergency Temporary Standard, to which I will refer to
25 as the ETS. The second hearing will be in Birmingham,

1 Alabama on Thursday; the third will be in Lexington,
2 Kentucky on November 16; and the fourth in Charleston,
3 West Virginia, on November 18.

4 The purpose of these hearings, as many of
5 you know who have participated in MSHA's rule-makings
6 over the years, is to receive information from the
7 public that will help us evaluate requirements in the
8 ETS and develop a final rule that protects miners from
9 hazards associated with coal dust explosions. We will
10 also use the data and information gained from these
11 hearings to help us develop a final rule that responds
12 to the needs and concerns of the mining public, so
13 that the requirements of the final rule can be
14 implemented in the most effective and appropriate
15 manner.

16 This ETS was issued in accordance with
17 Section 101(b) of the Federal Mine and Safety Health
18 Act of 1977, the Mine Act. Under Section 101(b), the
19 ETS is effective until superseded by a mandatory
20 standard; and in accordance with the Mine Act, the
21 mandatory standard must be issued no later than nine
22 months after publication of the ETS. The ETS also
23 serves as the proposed rule, as most of you know, and
24 commences the regular rule-making process.

25 Mine operators apply rock dust in

1 underground bituminous coal mines to reduce the
2 explosion potential of coal dust and other dust
3 generated during mining operations. Effective rock
4 dust application is essential to protect miners from
5 the potential of a coal dust explosion; or if one
6 occurs, to reduce its severity. MSHA established a
7 standard, based on the Federal Coal Mine Safety and
8 Health Act of 1969, that required mine operators to
9 maintain at least 80 percent incombustible content of
10 the combined coal dust, rock dust, and other dust in
11 return airways. In all other areas of the mine, under
12 the coal act, the combined dust needed to contain at
13 least 65 percent incombustible content.

14 MSHA determined that revising the standard
15 for "Maintenance of incombustible content of rock
16 dust" is necessary to immediately protect miners from
17 hazards of coal dust explosions. This determination
18 is based on: MSHA's accident investigation reports of
19 mine explosions in intake air courses that involved
20 coal dust, and that was embodied in Dubaniewicz 2009;
21 the National Institute for Occupational Safety and
22 Health, or NIOSH, Report of Investigations 9679
23 (Cashdollar, et al. 2010), "Recommendations for a New
24 Rock Dusting Standard to Prevent Coal Dust Explosions
25 in Intake Airways"; and MSHA's experience and data.

1 MSHA has estimated the economic impact of
2 the ETS and has included a discussion of the costs and
3 benefits in the preamble.

4 As stated earlier, we will use the
5 information provided by you to help us decide how to
6 develop the final rule. The preamble to the ETS
7 discusses the requirements of the ETS and also
8 includes several requests for comment and information.
9 As you address the requirements of the ETS and any
10 specific requests for comment that we have made,
11 either in comments to us today or those sent to us in
12 Arlington, please be as specific as possible with
13 respect to the impact on miner safety and health,
14 specific mining conditions, and feasibility of
15 implementation. That will be very important. At this
16 point, I want to reiterate the specific requests for
17 comment and information. And these were the requests
18 that were contained in the ETS.

19 MSHA solicits comments from the mining
20 community regarding the increase in incombustible
21 content of dust in air courses where methane is
22 present; the ETS requires an additional 0.4 percent
23 total incombustible content for each 0.1 percent of
24 methane where methane is present in any ventilating
25 current. Please include rationale and supporting

1 documentation for any suggested alternative compliance
2 methods.

3 MSHA requests comments on all the estimates
4 of cost and benefits, including net benefits,
5 presented in this ETS. Specifically, MSHA requests
6 comments on the Agency's benefit estimates, as well as
7 supporting data. MSHA solicits information from the
8 mining community that would enable a more specific
9 analysis of costs, which could include the costs of:
10 additional rock dust; increased labor needed to apply
11 the rock dust; and any additional equipment that would
12 be necessary, such as, pod dusters, trickle dusters,
13 finger dusters and scoop batteries. For equipment,
14 please include the type, number of pieces, costs and
15 expected service life. Please explain whether mining
16 methods would affect the costs, such as longwall
17 compared to non-longwall mines.

18 To date, the Agency has received one comment
19 on the ETS. You can view comments on the Agency's
20 website at www.msha.gov under the section entitled
21 Rules and Regulations.

22 The post-hearing comment period for the
23 proposal closes on December 20, 2010 and MSHA must
24 receive your comments by midnight Eastern Standard
25 Time on that date. You may submit comments following

1 this hearing by any of the methods identified in the
2 ETS.

3 The hearing, as many of you know, will be
4 conducted in an informal manner; cross-examination and
5 formal rules of evidence will not apply. The panel
6 may ask questions of the speakers. The speakers may
7 ask questions of the panel.

8 MSHA will make a transcript of the hearing
9 available on the Agency's website within one week of
10 each hearing. If you wish to present written
11 statements or information today, please clearly
12 identify your material and give a copy to the court
13 reporter. We also ask that those in attendance who
14 may not be speaking sign the attendance sheet in the
15 back of the room. We also have additional copies of
16 the ETS should anybody need a copy.

17 Please begin by clearly stating your name
18 and organization, and spell your name for the court
19 reporter so that we have an accurate record.

20 And now we will begin today's hearing. Our
21 first speaker will be Edgar "Butch" Oldham with the
22 United Mine Workers of America.

23 MR. OLDHAM: My name is Edgar Oldham,
24 Junior, E-d-g-a-r, O-l-d-h-a-m, Junior. I am with the
25 United Mine Workers of America.

1 First, I would, Madam Chair, I would like to
2 thank you for this opportunity and distinguished panel
3 members to be here today to speak on this issue. It's
4 one that we totally support and I just have a few
5 comments and will be rather brief.

6 Like I say, at first I want to thank you for
7 the opportunity to speak today on this issue. I will
8 say for the record that I support all of the comments
9 that have been submitted by the United Mine Workers of
10 America on this issue. I understand the company's
11 concern with trying to comply with this new standard,
12 but I also understand what their concern might be if
13 something happens at their mine if inadequate rock
14 dusting isn't applied. I think I can speak pretty
15 freely on this issue. I have had the opportunity to
16 be at the -- part of the investigations of the last
17 five major explosions in this country. I have seen
18 the destruction, not only within the mine but also
19 within these communities. I know what it does. I
20 know how powerful these explosions can be. You can
21 take an explosion that rips a roof strap, that's
22 bolted to the roof, from a roof. That's powerful.
23 When you can take a scoop bucket and it busts the
24 welds on a scoop bucket, that's something that's
25 powerful. If more rock dust helps us prevent

1 something like this, then that's what we need to do.

2 If everybody at the mines had the same
3 opportunity to see the destruction that I witnessed,
4 they probably would encourage more rock dusting and
5 hopefully in that effort would reduce these
6 explosions. The amount of rock dust that is applied
7 in the immediate intake and that return airways coming
8 off the mining section is our first line of defense in
9 the event of ignition or explosion. This ultimately
10 determines how far an explosion may travel in the
11 event that something ever happens. To me, this is no
12 different than having an adequate fire extinguisher in
13 your home. Do you want something that might put a
14 fire out in your home, or do you want one that will do
15 an adequate job and distinguish a fire. To me it is
16 the same principle so that's why I support the
17 80 percent rule on this ETS.

18 I can say just personally from all the mines
19 that I have been, and I have been doing this job 22
20 years so I have seen a lot of coal mines and been a
21 lot of places, very few mines do an adequate rock
22 dusting job in my opinion. When places are dusted
23 after mining is completed, they usually have someone
24 take a couple bags of rock dust and hand dust the
25 place. If anybody has ever been in a mine, you can

1 see what hand dusting is. In my opinion, it is not
2 adequate rock dusting. It's what I refer to as salt
3 and pepper dusting, just do enough to get by until the
4 rock dusting can be adequately applied usually on the
5 third shift which is normally a noncoal producing
6 shift. So like I say, if something -- if you have an
7 ignition, a little bit of rock dusting that they apply
8 with a couple bags of dust is not going to help you.

9 In closing, if this rule prevents one
10 explosion from happening or if it prevents one from
11 coming off a section and affecting the entire mine, it
12 will be well worth the effort.

13 So again, I support the comments that we
14 previously submitted by the United Mine Workers and
15 hope this ETS becomes a final rule. Thank you.

16 MS. SILVEY: Thank you. Thank you very
17 much, Mr. Oldham.

18 Does anybody else wish to speak? Yes,
19 ma'am.

20 MS. GIANINO: I just saw this on the news
21 this morning and had an interest in this.

22 MS. SILVEY: And your name?

23 MS. GIANINO: My name is Peggy Gianino,
24 P-e-g-g-y, G-i-a-i-n-o. I'm just a private citizen
25 who has a major interest in this and I have been

1 watching on the news and what's been going on all over
2 with our miners throughout the world. And if there is
3 any way to strengthen the laws to protect the miners,
4 I'm all for it. I am actually looking to go back to
5 school, and mining safety is an issue of mine. It has
6 also been something that's been brought to me on a
7 personal level with an individual who has had to deal
8 with blasting and exploding coming from an area quarry
9 which would shake our homes. And literally you would
10 be standing in your home and an explosion would go
11 off, and my God, your house just shakes. And to bring
12 this to the attention of people, they just don't
13 understand what it feels like to be losing balance
14 under your feet. And these are explosions going on
15 somewhere within the vicinity of a third of a mile
16 from my home with an interstate in between.

17 But all I know is, as a homeowner, I am
18 feeling these vibrations going through the ground and
19 hearing and then you see the dust going up in the air
20 and how it's affecting the environment of the people
21 who are even a third of a mile away, I can't even
22 imagine the effects that it has on our people that are
23 underneath ground. You know, this is an issue that
24 everybody seems to not want to take an interest in
25 because, you know, you just might shake, rattle and

1 roll an area where people don't want to go. Well, I
2 am not scared to do that. As a homeowner and a
3 private citizen, this has affected -- you know, with
4 the vibrations and sound and dust of how it affected
5 the community in St. Charles County. And this is just
6 not something that is affecting people here. This is
7 a United-States-wide thing. There are people all over
8 the United States and all over the world who are
9 dealing with this problem and everybody seems to keep
10 ignoring it and pushing it to the side. The laws on
11 mine safety, blasting and explosives, they need to be
12 strengthened and they need to be hardened. We need to
13 protect our people. We need to protect our homes, our
14 private citizens. Like I said, maybe I am on the
15 right track, maybe I am not, but all I know is that I
16 am working with people through the United States
17 who -- we are trying to bring this issue up to our
18 federal government. And it's really hard to get
19 somewhere because we are just small little simple
20 people, and when you are dealing with blasting
21 companies and quarries and mining companies, they are
22 going to do anything they can to silence us and try to
23 put us to the side.

24 So I am so glad to see you here and just to
25 have my five minutes to tell you my concerns and I

1 would love to talk to someone more because I can put
2 you in touch with people through the United States who
3 find this an issue, and we all swear to God at the
4 day's end we will meet on the steps in Washington,
5 D.C. So thank you. Please keep pushing for the
6 safety of our miners.

7 MS. SILVEY: Thank you. Does anybody else
8 wish to speak?

9 (No response.)

10 Does anybody else -- if nobody else wishes
11 to speak right now, we are going to take a break, and
12 we will take a break probably for a half-hour just to
13 see if anybody else is going to come, and then we will
14 decide what to do after if nobody else comes. But
15 right, now let's just take a half-hour break. Thank
16 you.

17 (A break was taken from 9:33 a.m. to 10:21 a.m.)

18 MS. SILVEY: At this time we will reconvene
19 the Mine Safety and Health Administration's public
20 hearing on the ETS Maintenance of Incombustible
21 Content of Rock Dust in Underground Coal Mines.

22 At this point, is there anybody else who
23 wishes to make a statement?

24 (No response.)

25 If nobody else wishes to make a statement,

1 at this point I am going to close today's hearing.
2 And as I close the hearing, I am going to reiterate to
3 everybody again that we ask you to respond to review
4 the Emergency Temporary Standard and to respond to the
5 request for information that we include in the ETS and
6 in the preamble to the ETS. We ask that when you do
7 that, you please include your rationale and supporting
8 documentation. We do appreciate the people who have
9 come to the public hearing today, and we also
10 appreciate people who came and may not have spoken.
11 But if anybody wishes to respond before the record
12 closes, the record closes on December 20, 2010, please
13 get your comments to us by any of the methods listed
14 in the ETS.

15 So, at this point, thank you, again, and we
16 are going to conclude. I'm going to conclude now. If
17 anybody happens to come later, we can reopen the
18 hearing, but right now at this point we will conclude
19 the hearing. Thank you very much.

20 (Hearing concluded.)

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1 REPORTER CERTIFICATE

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I, KEVIN J. WEICHMAN, CSR, CCR, do hereby
3 certify that the

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PUBLIC HEARING

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was reduced to writing by me; and that this hearing is
a true and correct record of the testimony given.

6

I further certify that I am neither attorney
7 nor counsel for nor related nor employed by any of the
parties to the action in which this deposition is
8 taken; further, that I am not a relative or employee
of any attorney or counsel employed by the parties
9 hereto or financially interested in this action.

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Dated October 30, 2010.

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KEVIN J. WEICHMAN, CSR, CCR

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