



OXBOW MINING, LLC

3737 Hwy 133 P.O. Box 535 Somerset, Colorado 81434 USA Tel (970)929-5122 Fax (970)929-5177

PROPOSED RULE 30 CFR PART 75 RIN 1219-AB52 Sealing of Abandoned Areas; Final Rule May 22, 2007

Comments by Oxbow Mining, LLC in Denver, Colorado July 17, 2007

Oxbow Mining, LLC owns and operates the Elk Creek Mine in Somerset, Colorado. Our Elk Creek Mine is an underground longwall operation that was opened in February 2002. Elk Creek Mine's production rate is approximately 6.0 million tons annually.

I appreciate the opportunity to make the following observations to the Mine Safety and Health Administration (MSHA) regarding the Emergency Temporary Standard:

- **Rule Making** – MSHA's use of Program Information Bulletins instead of standard rule making procedures left the industry and MSHA's inspectors in a total state of confusion. This confusion was probably more pronounced in this district than other places in the nation simply because the Mitchell-Barrett (the only approved seal at the time) was substantial for many eastern mines. Western operators and western MSHA personnel knew that this seal was inadequate for our miners' safety. Therefore, we have operated since mid-2006 without an approved seal and our operation builds a seal approximately every 4 days due to spontaneous combustion concerns. Today, we have 109 active seals. If this situation required an Emergency Temporary Standard, the question is "why was that not the case in mid-2006"?
- **Seal Construction** – To date, MSHA and NIOSH have taken an extremely conservative approach in the design parameters; safety factor, shear strengths, compressive strengths and mine's environment. Additionally, the rule contradicts itself in several areas. If MSHA's seal design prohibits the installation of seals in the west, this will greatly decrease our miners' safety not enhance it.
- **Removal of Metallic Objects** – This requires the removal of roof and rib support in an area that miners have to work and/or travel. This clearly increases the daily risks of our miners' safe return home. We strongly opposed this and deny that there are sound reasons for this requirement.
- **Monitoring and Sampling** – What will be MSHA's sampling and testing techniques?
- **Seal Construction Certification** – Design of the seal to specifications is the function of a professional engineer. Construction of the seal to the design performance is the responsibility of a certified person. A senior mine manager can approve (counter sign) but can he "certify"?
- **Inert Atmosphere** – MSHA's definition of an inert atmosphere is not reality. The atmosphere is inert when the oxygen content is less than 12% and the methane concentration is less than 5% or greater than 15%. Because a seal is ingassing is not reason for justification extra monitoring nor should it require an Action Plan. A sample indicating an explosive atmosphere behind a seal does not constitute an imminent danger. MSHA has acknowledged this fact. Due to this ETS some mines will deal with an inspector that will decide the proper action is to evacuate the mine.
- **Prohibition of Welding, Cutting and Soldering** – The requirement of 'no welding, cutting or soldering with an arc or open flame within 150 feet of a seal' must be eliminated. This is uncalled for and impractical for mines that install gob isolation seals. Instead miners must comply with existing regulations to perform this normal and often required maintenance function.
- **Replacing Existing Seals** – Replacing existing seals is impractical if our goal is to reduce the safety hazards of our miners. Definitely, this would expose our miners to greater safety hazards.

- Removing Electrical Cable – Requiring all electrical cables be removed from a sealed area is unnecessary and unrealistic. This has no basis in mining history and we are aware of MSHA's theory on the Sago Mine.

In Closing:

I do not doubt that coal operators, MSHA and Congress intend our action to improve the safety of our nation's miners. I have been disturbed hearing the derogatory comments directed at coal operators and MSHA from our congressional mine committee. If congress wants to consider action to increase safety of this nation's miners, why wouldn't they consult the persons most knowledgeable about the industry; operators and their own enforcement agency (MSHA) of 40 plus years? If they had, they might understand that all underground mines are not the same and that seals are installed for varying reasons. Eastern mines and western mines have very different requirements for seals and seal regulations must be such that they provide the needs of both. Colorado has seven (7) underground coal mines and five (5) are consistently ranked in the top ten most productive underground mines in the United States. This regulation must recognize that seals serve varying needs for different mining conditions.

This nation depends on our product to provide the fuel to maintain the high standard of living that we have become accustomed to and to enhance our national security efforts. The reserves that we are depending on for our nation's future energy supply are more challenging than the reserves that we have produced today. Fact is that tomorrow's mining will be more difficult than today's.

Oxbow Mining, LLC will provide written comments on this regulation. We appreciate this opportunity, thank you.