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March 23, 2011

MSHA
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939
zzMSHA-Comments@dol.gov

RE: Written Comments on Proposed Rule RIN 1219-AB75
Examinations of Work Areas in Underground Coal Mines
for Violations of Mandatory Health or Safety Standards

To Whom It May Concern:

The following written comments are provided on behalf of Interwest Mining Company regarding the proposed rule RIN 1219-AB75:

- 1. General Comment - Adding Violations to Examinations:** The proposed regulations would add language requiring violations be added to the examinations made by mine examiners. For example:

Regulation: 30 CFR 75.360(b) Preshift examination at fixed intervals.

- (b)** The person conducting the preshift examination shall examine for hazardous conditions and violations of mandatory health or safety standards, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at the following locations:

We disagree with MSHA including the identification of violations with the required mine examinations. The mine examinations are designed to look for hazardous conditions that need to be corrected. By adding violations to the examination would cause the examiners to focus on non-hazardous conditions that could distract them from the more important hazardous conditions. Violations need to be found and corrected but they should not be made common with hazardous conditions. There are methods established for identifying violations and correcting violations such as equipment operators pre-op checks. We would request that MSHA reconsider their position on including violations as proposed.

AB75-COMM-12

On November 9, 1991 MSHA addressed this question in the Ventilation Question and Answers. On page 116 the following question and answer is given:

Question: Is a mine examiner required to examine for violations of mandatory health or safety standards under these final rules?

Answer: The person conducting the preshift examination must examine for hazardous conditions, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction. Most "hazards" are violations of mandatory standards. The examiner should be concerned with the type of hazards that threaten the safety of miners, such as methane accumulations, oxygen deficiency, loose roof and ribs, damaged or improperly installed ventilation controls on the section, dangerous accumulations of loose coal or coal dust, rock-dusting not applied in required quantities, electrical hazards from trolley wires, fire hazards from damaged or improperly operation belt conveyors, or other obvious fire hazards. The preshift examiner will not operate machinery to examine such items as brakes and lights, although those are definitely hazards, and these type defects will be promptly corrected through compliance with other provisions of the standards. Requiring the preshift examiner to look for all violations could distract the examiner from the more important aspects of the examination.

MSHA understood the importance of focusing the attention of the preshift examiner on hazardous conditions rather than on all violations. By placing violations in the standard, the preshift examiner will be consumed with trying to find all violations and have the potential of missing the more important hazardous conditions. MSHA knew this back in 1992, so why would they now want to change and go against what they have preached in the past?

2. Regulation: 30 CFR 75.363(e)

- (e) Review of citations and orders. The mine operator shall review with mine examiners on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examination are required.

We disagree with this regulation for the following reasons:

This regulation in its current configuration creates many questions regarding MSHA's intent, including:

- Would the regulation require the mine operator to review citations and orders with the mine examiners on a quarterly basis and be tied to an MSHA quarterly inspection or a quarterly time frame defined by the operator?

- Would there be a time frame for completion attached to the regulation or would it be left up to the discretion of the MSHA inspector or the company?
- At what level of preshift examiners would MSHA want this review to be conducted? Would it be those who are currently performing examinations, those who have bid mine examiners classification, those who fill in at times, or any person with certification?

These are just a few of the unanswered questions that will come from this regulation. MSHA needs to be more specific as to what is required and what benefits will be gained from this type of regulation. Good ideas do not necessarily make good regulations.

3. **General Comment – Recordkeeping:** The proposed regulations would add language requiring violations be added to the records made by mine examiners. For example:

Regulation: 30 CFR 75.360(g) Recordkeeping.

- (g) A record of the results of each preshift examination, including a record of hazardous conditions and violations of mandatory health or safety standards and their locations found by the examiner during each examination and of the results and locations of air and methane measurements, shall be made on the surface before any persons, other than certified persons conducting examinations required by this subpart, enter any underground area of the mine. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the certified person who made the examination or by a person designated by the operator. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. A record shall also be made by a certified person of the action taken to correct hazardous conditions and violations of mandatory health or safety standards found during the preshift examination. All preshift and corrective action records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine officials next regularly scheduled working shift. The records required by this section shall be made in a secure book that is not susceptible to alternation or electronically in a computer system so as to be secure and not susceptible to alternation.

We disagree with the addition of the reference to violations being entered in the approved book. This would not only apply to 30 CFR 75.360 but all references to recordkeeping within the proposed rules.

The following items are some of the concerns raised by the proposed regulation:

- The hazardous conditions found during an examination are recorded in a book and corrected. If the condition requires additional work beyond the end of the shift on which the condition was found, the condition must be carried over until corrected. By adding violations to this process, there will be many more entries that could be in various stages of being corrected. This would make the books very complicated and hard to keep current and updated.
- The preamble states that “Under the proposal, operators would have to correct violations within a reasonable time”. What is a “reasonable time” to correct violations? We are very concerned about how individual inspectors would determine “what a reasonable time would be”.
- We believe that placing the mine examiners in a role of compliance rather than prevention goes against the purpose of a mine examination which is to check the mine for hazardous conditions.

We appreciate the opportunity to make comments on this proposed regulation. Should you have any questions regarding our response, please feel free to contact me at 801-971-5521.

Sincerely,

Ralph Sanich
Director of Safety