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Sent: Friday, March 25, 2011 3:39 PM

To: zzMSHA-Standards - Comments to Fed Reg Group

Subject: RIN 1219-AB75

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Attn: Desk Officer for MSHA

Attached are written comments from Tri County Coal to the proposed regulations addressing Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards. A hard copy of the comments are being sent in the mail to the MSHA, Office of Standards, Regulations and Variances in Arlington, Virginia.

Thank you,
Wes

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AB 75-COMM-15



March 25, 2011

MSHA, Office of Standards, Regulations, and Variances,
1100 Wilson Boulevard, Room 2350,
Arlington, Virginia 22209- 3939.

Re: RIN 1219-AB75 (Comments to address Examination of Work Areas in
Underground Coal Mines for Violations of Mandatory Health or Safety Standards.)

Ladies and Gentlemen:

Attached are comments from Tri County Coal, LLC, regarding the proposed Examination of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards. We appreciate the opportunity to submit comments.

Tri County Coal, LLC. operates one underground mine in central Illinois called Crown III Mine. Crown III Mine, owned by Springfield Coal Company, is a UMW- represented mine that employs approximately 225 wage and salaried employees. The underground mines in Illinois are large, well-run operations with excellent health and safety records when compared with other mines of similar size across the nation. Tri County Coal shares the same goals as coal operators across this state and the nation: to ensure the safe work environment of our miners and to comply with all State and Federal Regulations to the best of our abilities.

General Comments:

Tri County Coal, LLC. has a policy that states, *"Any employee who observes a potential violation of State or Federal Regulations should correct the violation, if possible; or if it is not possible to correct immediately, the violation shall be immediately reported to Mine Management. Failure to follow this policy may result in disciplinary action."* Tri County believes all miners should be able to recognize hazards and have basic knowledge of violations in order to assure and maintain a safe working environment. We believe most reputable and respectable mine operators have similar policies that their employees must comply with if they wish to remain employed. We acknowledge that there may be mine operators who ignore or attempt to circumvent regulations aimed at ensuring safe work environments for the sake of production and profit. Additional new standards are not likely to change their behaviors. Tri County does not believe that imposing new

regulations on all operators in order to address issues with problem mines and operators is the answer to improving mine safety.

Mine examiners certainly have a key role to play in mine safety, and their daily actions can help maintain or create safe work environments. However, each mine examiner has a different opinion as to what constitutes a hazard or hazardous condition, which results in inconsistency. And inconsistency is not only prevalent with mine examiners, it exists with MSHA inspectors who have different opinions/interpretations of the regulations, which confuse and frustrate both miners and operators. MSHA inspectors are subject to a thorough indoctrination that includes on-the-job training, mentoring, and classroom training. This program takes two years to complete before new inspectors are allowed to inspect a mine by themselves. The industry is told that this training is standard for all inspectors to ensure regulating consistency by MSHA, yet operators experience many different interpretations of the CFR from inspectors from different districts in the country. Tri County suspects that mine examiners who have not had the extensive training that MSHA inspectors go through will be even more confused about what conditions constitute violations, which will lead to under-reporting or over-reporting of "violations" in mine examiners' books of hazards. The notion that mine examiners can inspect for violations with little more training than a review of citations every 90 days when compared to MSHA inspectors receiving a minimum of two years of training to perform their inspections certainly begs the question: Do MSHA inspectors really need all of this formal training if mine examiners can drastically reduce serious injuries and fatalities by spending what MSHA estimates is roughly an extra 30 minutes per day inspecting for violations?

Another concern is that many conditions cited by MSHA inspectors as violations are not really hazards. There are many examples that can be cited here, but a perfect example is a violation issued for a fire extinguisher not being equipped with a tag that is punched to show it was inspected within a six month period. The fire extinguisher can be in perfect condition - fully charged and located in the proper position - but without a tag to indicate it has been inspected within the last six months, it is technically a violation. However, it clearly is not a hazard. Another example of a questionable hazard is the MSHA requirement that all areas of the mine be rockdusted to 80% non-combustible content. Is 70% or 75% non-combustible content more hazardous than the new 80% requirement? How are mine examiners, let alone MSHA inspectors, expected to know what the non-combustible content is present without taking a sample and having it analyzed? Requiring examiners to make this judgement based on visual observation clearly will result in many instances being reported by mine examiners that areas need rockdusted when the true non-combustible content is unknown. Once the conditions reported to management are entered in the examiners' records of hazards, operators are then subject to responding to the "hazard" or facing Unwarrantable Failure situations should an inspector review the records and management has not taken action or the action taken by management does not satisfy the inspector. Tri County would suggest that if this proposed regulation must go forward, that the violations be limited to the "Rules to Live By" categories since MSHA has already recognized that most serious injuries or fatalities involve violations of these areas of the regulations. This may address concerns of

addressing non-hazardous violations of the law such as the fire extinguisher tag. However, even this improvement in the proposed regulations will not address the example of the non-combustible content issue cited in this paragraph.

All mine operators are concerned with MSHA's increased citing of the "inadequate examination" standard that is being issued routinely today. The common practice for MSHA inspectors today is to immediately review the examiners' book of hazards to see if a condition cited by the inspector was entered in the books as a hazard. If the condition has not been recorded, in many cases the operator is served a second citation, which is issued for an "inadequate examination." If the condition cited was listed in the examiners' book and was not addressed or corrected, the MSHA inspector usually issues an "Unwarrantable Failure" because the operator was aware of the hazard and did not correct it. Tri County believes this proposed regulation will significantly increase the number and severity of the above situations with no additional hazards having been introduced into the workplace.

The proposed rule will also place new requirements on mine foremen who will be required to prioritize corrective measures without regard for severity as the potential consequences for not addressing "violations", regardless of severity, will be the same. To simplify, the failure of the operator to correct a violation reported by a mine examiner in a timeframe that an MSHA inspector deems appropriate will likely result in additional enforcement action – most likely in the form of an Order. The language in the preamble of the proposed rule suggests that MSHA will continue to allow the operator the freedom to prioritize and correct hazards based on the seriousness of the hazard. However, this language usually doesn't filter down to the workplace as MSHA inspectors still hold the key to any enforcement action, and MSHA's interpretation is usually quite different from the mine operator's interpretation.

Mine Examiners in Illinois are certified by the State of Illinois to examine mines and report all hazards observed. The following requirements are taken directly from the Illinois Coal Mining Act:
(225 ILCS 705/6.04)

705/6.04 Examinations of working places

(A) In gassy mines:

1. When the mine is to be operated he shall examine the prescribed working places of such mine within 4 hours before any workers in such shift, other than the examiner or the examiners designated by the Mine Manager to make the examination, enter the underground areas of the mine. Examine every active working place in the mine and make tests therein with a permissible flame safety lamp (this has been subsequently replaced with permissible, approved gas detectors) for accumulation of methane and oxygen deficiency in the air therein; examine seals and doors to determine whether they are functioning properly; inspect and test the roof, face and rib conditions in the working areas and on active roadways and travelways; inspect active roadways, travelways, approaches to abandoned workings and accessible falls in active sections for explosive gas

- and other hazards; and inspect to determine whether the air in each split is traveling in its proper course and in normal volume.
2. On non-coal producing shifts he shall examine the mine in its entirety the same as for a coal producing shift, except where men are to work only in the shaft, slope or drift or on the immediate shaft bottom, then only that area immediately surrounding the bottom need be examined.

(B) In non-gassy mines:

1. He shall examine the underground areas in the mine at least once in each calendar day during which coal is produced. Such examination shall be made within 4 hours immediately preceding the beginning of the first coal-producing shift on such day.
2. On Idle days he shall examine all sections of the mine where men are required to work.
3. On idle nights, if the mine has been examined for the day shift and the men are to work in sections previously examined and no coal is to be mined, no further examination shall be required.

- (C) One examination on each day when workers perform production or idle day work shall include the escapeways required by sections 19.11 and 19.13.

As you can see, the State of Illinois requires all mine examiners to conduct comprehensive examinations and inspections of the mine. These certified examiners work for the operator but are held accountable for their actions, or inactions, by the Illinois Coal Mining Act and their agents, the Illinois Department of Natural Resources – Office of Mines and Minerals. They should not be expected to be held accountable to yet another governing body that does not hold their certification to different standards. Mine Examiners certified in the State of Illinois already have a conflict in trying to serve two masters: Mine management and the State of Illinois. Mine Examiners who “aggressively” perform their duties may be subject to management’s wrath because although they are inspecting for hazards to make the mine environment safe for fellow miners, the hazards they report to management result in extra work for mine management. Consequently, in many non-represented mines whose management style is to operate their mine with little concern for worker safety and regulatory compliance, examiners who diligently perform their duties are not likely to be examining very long or often. This is because they have the freedom to move miners from job to job with few consequences. In union-represented mines, classified mine examiners who are in conflict with management have no option but to bid off the Mine Examiner job or relinquish their Mine Examiner certification so that they are no longer qualified to be a mine examiner. Tri County believes that if these proposed regulations are enacted, both union and non-union mines will not be able to maintain certified mine examiners because of the pressure they will be under by MSHA to record what MSHA perceives are violations, not what the examiner himself perceives as violations. Certified Mine examiners will most likely relinquish their certification and then they won’t have to be subjected to this situation. If MSHA does not wish to further reduce the number and

viability of union-represented mines as well as encourage competent mine examiners to surrender their certifications, it will not enact or adopt these proposed regulations.

VIII. Other Regulatory Considerations

B. Executive Order 13132: Federalism

The proposed regulations state the following:

“This proposed rule does not have “federalism implications” because it will not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Accordingly, under E.O. 13132, no further Agency action or analysis is required. Tri County strongly disagrees with this assessment. As stated above, Mine Examiners are certified by State of Illinois. To suggest that there are no implications by requiring mine examiners who are certified by a specific state and yet will be held responsible by the federal government if they do not perform according to MSHA’s expectations regarding these proposed regulations is naïve and unacceptable. If these regulations are adopted, mine examiners will be held accountable to two different agencies as well as their employer, the mine operator. To attempt to serve and satisfy the requirements of three “masters” is quite a lot to ask of this group of miners. At present when MSHA inspectors issue citations that use the term “inadequate examinations”, the Illinois State Department of Natural Resources-Office of Mines and Minerals become very upset as this appears as though they (IDNR-OMM) are not doing their job.

Final Comments:

MSHA repeatedly requires operators to take corrective actions when violations are found. Then the hazards or the corrective actions taken must also be recorded as required by 75.363. These proposed regulations are another avenue for MSHA to review the examination records for entries and corrective actions. If not found to be satisfactory in the MSHA inspector’s opinion, management will be punished. In either case, entering the “corrective actions” in the book of hazards immediately sets that supervisor, manager or operator up for an Unwarrantable Failure Order in that he knew (documented) a situation as a hazard and then failed to correct the hazard if the actions taken by the operator failed to correct the hazard to MSHA’s satisfaction. This proposed regulation again has self-imposed “Entrapment” written all over it and will most certainly result in operators being unable to maintain or acquire competent miners willing to work as Mine Examiners or Supervisors.

MSHA has spent considerable time, effort and resources calculating compliance costs for both mine operators and the agency. If MSHA has consulted mine operators when evaluating and determining the amount of additional time required of mine examiners to perform these additional requirements, it is not apparent in the preamble or discussion of the proposed regulations. To suggest that a mine examiner will only add approximately 3 minutes of work time to document violations found in the examiners’ book of hazards begs the question: What is the source of these estimates? MSHA only states, “Based on Agency data and experience, MSHA estimates that it would take a certified examiner, earning a supervisory wage of, an additional 30 minutes (0.5 hrs) per

preshift examination to identify violations and record them along with corrective actions. The sources of this estimate are very vague and questionable.

Tri County appreciates the opportunity to submit these comments to the proposed regulations and is willing to discuss any of the concerns in detail with MSHA officials.

Sincerely,

Archie Parker, Jr
Managing Partner

Tony Liebscher
President – Local Union

Gary Ronald
Managing Partner

Wes Campbell
Manager of Safety and Training