

Independent Miners & Associates, Inc.

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

2011 FEB 18 A 11:17

Dear Sirs:

REFERENCE: MSHA; RIN 1219-AB75

Comments are hereby submitted addressing the above reference with a subject of "Examination of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards" as they appeared in the Federal Register, Volume 75, Number 247 dated December 27, 2010.

Comments are directed to the economic feasibility of the proposed rule on the anthracite underground mine operators in what we will refer to as classes; namely 1-19 employees Class 1, and the 20-500 employees class, Class 2. It can be noted that only one (1) anthracite underground mine falls in the Class 2 category.

In reviewing the attached analysis, it is most clear the economic hardship on the anthracite underground mining community far exceeds the MSHA published figure of .43 % of annual revenues for Class 1 mine operators and .12 % of mine operators in Class 2. Therefore, the MSHA "certification" that the proposed rule will not have a significant impact based on the percentage of revenues is not close to being accurate for the anthracite underground mine operators. The major reason lies in the revenues generated by anthracite mining versus bituminous. The mining methodology for anthracite is largely manual whereas bituminous is highly mechanized. Hence, low production and low revenues for anthracite make the figures presented by MSHA flawed for the anthracite underground mines segment of the industry.

Once again rules, regulations, and laws are being proposed which lumps anthracite underground mine operators in with large corporate mechanized mining entities. The Department of Labor, Office of Inspector General, Office of Audit, in a 2006 audit recommended that MSHA consider the uniqueness of anthracite mining in its regulatory process. With this proposed rule, MSHA does not appear it has followed this recommendation.

AB75-COMM-2

Because the anthracite underground mining industry is the Achilles heel in the Federal regulatory process for most issues, and coupled with the fact there are only about 10 anthracite underground mines, it would seem that logic and common sense dictate that MSHA take an oversight role to anthracite underground mining and leave the primary responsibility to Pennsylvania. With the fact that Pennsylvania recognizes the differences in mining methodologies, has separate laws for anthracite and bituminous, and has the personnel who know anthracite underground mining, it seems appropriate that action be taken towards this end. Further, what is it costing MSHA to include our 10 mines in its inspection process? Perhaps a cost feasibility study is warranted. Additionally, we have just learned that all six (6) inspectors from District 1, Wilkes-Barre, are being sent throughout the United States for several weeks. This supports what has been said that MSHA only needs to undertake an oversight role.

Lastly, regarding the economic aspect of this proposed rule, President Obama, in an Executive Order dated January 18, 2011, requires federal agencies to "design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness". In its definition of cost-effective and cost-justified, agencies must consider costs and benefits and choose the least burdensome path. The data herein clearly defines the least burdensome path based on percentage of revenues and consequently, in our opinion, dictates compliance with this Executive Order.

We look forward to a response to these comments.

Thank You.

Sincerely,

A handwritten signature in cursive script that reads "Alfred J. Brown".

Alfred J. Brown, President
Independent Miners & Associates, Inc
Anthracite Underground Rescue

cc: Office of Information and Regulatory Affairs
The Honorable Hilda Solis
The Honorable Joseph A. Main

IMA

MSHA; RIN 1219-AB75

Anthracite Underground Mines Economic Analysis

GENERAL: In determining the economic impact on the anthracite underground mines, the data that was published by MSHA in the before mentioned Federal Register was used as factors in this analysis. Additionally, Pennsylvania Department of Environmental Protection Coal Production Report for 2009 was also referenced and is attached.

A. CLASS 1 Analysis

Within this Class, coal production was 59,000 (rounded) tons for 2009. Referencing MSHA Table 2, this represents 1.2 % ($59,000/5,000,000$) of the total production in this class. Coal revenues equated to \$3,030,000 ($\$51.35 \times 59,000$) rounded or, again, 1.2 % of the total revenues.

Using the cost of \$1,093,000 found in MSHA Table 3 for this Class, the economic impact to the anthracite underground mine operators in this Class is 36.1 % ($\$1,093,000/\$3,030,000$) of annual revenues.

B. CLASS 2 Analysis

Within this Class, coal production was 113,000 (rounded) tons for 2009. Referencing MSHA Table 2, this represents .0005 % ($113,000/236,600,000$) of the total production in this class. Coal revenues equated to \$5,803,000 ($\$51.35 \times 113,000$) rounded or, again, .0005 % of the total revenues.

Using the costs of \$13,281,000 found in MSHA Table 3 for this Class, the economic impact to the anthracite underground mine operators in this Class is 43.7 % ($\$5,803,000/\$13,281,000$) of annual revenues.