

New Mexico Coal
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February 25, 2011

Patricia Silvey
Acting Director, Office of Standards, Variance & Regulations
Mine Safety & Health Administration
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Re: RIN 1219-AB75
Examinations of Work Areas in Underground Coal Mines for
Violations of Mandatory Health or Safety Standards

Dear Ms. Silvey,

San Juan Coal Company provides the following comments addressing the proposed rules regarding Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards.

San Juan Coal Company agrees with MSHA that underground coal mines are dynamic work environments where the working conditions change rapidly and without warning. That dynamic environment produces one of the first concerns and comments that we have regarding the proposed rule. Especially of late, mine inspectors have been very quick to cite the quality of an examination. It is our concern that this problem will be exacerbated by this proposed rule. The final rule must acknowledge this dynamic environment issue and require an inspector to ascertain that in fact a condition did exist at the time of the examination. Without this provision, it is a certainty that any violation observed during an inspection is likely to result in a second citation for the quality of the examination even if the cited condition did not exist during the examination in question. Our concern is that the net effect would be providing a source of meaningless violations that benefit no one.

The existing standard requires operators to identify and record hazardous conditions. It also requires the examiner to do something about the condition. The

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proposal also implies that examiners would be expected to correct violations that they observe. What does not seem to be acknowledged is that a very high percentage of said violations would require tools, equipment or materials that the examiner could not feasibly carry with them and in fact the examiner may not have the necessary training, certifications or skills to perform the required correction. The final rule must include provisions for corrections being made in a timely manner, without this resulting in additional citations of higher gravity and negligence.

MSHA is proposing that all required examinations be conducted in an effective and consistent manner to assure that hazardous conditions and violations of mandatory health or safety standards are timely identified and corrected. San Juan Coal Company is concerned that the definition of an "effective and consistent manner" and timely identification and correction leaves too much to the interpretation of individual inspectors resulting in multiple and changing standards due to the variation in interpretations.

Mine operators are already dealing with dozens of different interpretations of issues around lifelines, issues dealing with post accident breathable air and a collection of other rules where an overzealous inspector will redefine the regulation to suit their opinion and then issue a violation, telling the operator they can sort it out with the judge. This industry, of which MSHA is a part, does not need to increase this type of situation.

The proposal document discusses that once the violations have been identified and recorded, the operator is allowed to prioritize and plan for the corrective actions to take place. In order to clarify this completely the final rule should also include language acknowledging that if a violative condition has been identified, is recorded in the required book, does not present a hazard to miners and is on a work plan for correction, it would not result in an MSHA citation, provided the work plan is carried out. The rule should also address that conditions that the examiners have identified and the operator has corrected or has plans to correct, do not result in citations being issued. One example that has occurred in the past is that an examiner found that a cigarette butt had inadvertently left inside some supplies that had been delivered underground. The examiner identified the condition, removed the remnant smoker's articles from the mine and reported what had happened through an internal reporting document. Investigation revealed that the materials had come from the supplier's yard when the materials were packaged for shipment to the mine. The information was communicated via a safety meeting report. Later on a mine inspector saw a copy of that report on the lunch table in the mine. He issued a citation based on the information in the report. This new proposal must not be used in this manner.

The proposal would also add a new requirement that mine operators review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required.

This portion of the proposal should be modified to require a system of communication of these issues. The specifics of that system should be left to each mine to develop. Today many operators have systems of communication that include communication of violations, orders, comments, concerns and even compliments received during mine inspections. These systems communicate the results to all miners for each inspection day, not just the examiners. Such systems also include analysis of the citations to determine root causes and include steps to correct these root causes. This information is also communicated to all miners. These types of systems should be specifically accepted as meeting this communications requirement outlined in the proposed rule. This should not have to be another separate element.

The proposal document discusses the issue of violations for accumulations of combustible materials as one of the top ten cited safety standards. This particular standard, 30 CFR Part 75.400 is not effective in its current form. The standard basically covers every square inch of the mine, including the mobile equipment and fixed plant equipment. In its current format it is not possible to tell from the number of citations, where the real problems might lie. The Agency should take this opportunity to separate that rule into additional parts. The rule should have a section to apply to the environment of the mine, the roof, floor, ribs and rockdusted surfaces. A second section should be established to cover mobile equipment. A third section should be developed to address the fixed plant equipment in the mine. This would help everyone easily understand where the real issues are with regard to this standard.

In the proposal MSHA states that it does not intend that the proposal would significantly change the general scope of examinations under the existing standards. It goes on to state that examiners would not be required to perform additional tests, take additional measurements, or open and examine equipment or boxes. This needs to be further clarified as to what this means. Does it mean that examiners don't need to examine SCSR caches? Does it mean that constructed refuge alternatives do not need to be examined? Does it mean that containers of firehose are not opened during these examinations? Without real clarification on this meaning, this proposal produces another area that will result in dozens of individual interpretations, citations for inadequate examinations and increases in the number of citation challenges.

This rule should also take address one additional issue. At times an examiner may inadvertently write the wrong date on a DTI board in the mine. In the past such mistakes have resulted in an inspector issuing a violation for this error, even though it was clear that the examination had been completed and the record book maintained on the surface contained the correct date. These kinds of errors should not result in violations being issued. When MSHA inspectors make an error in their paperwork no similar penalty exists for them. They simply issue a modification of their paperwork. These types of violations should not be issued. They have no bearing on the health and safety of miners.

The proposal document discusses the Agency view of how things function under the existing standards. It states that operators observe conditions and only record and note corrective actions for hazardous conditions. The conditions that they do not believe are hazardous do not have to be recorded or corrected at the time of the examination. This does not preclude them from being required to be in compliance with the existing standards.

The proposal document states that conditions that might have been identified only by MSHA inspectors would now be found and corrected by the operator. Under the existing standards violations may go undetected and uncorrected because operators do not believe that they constitute hazardous conditions. This statement is very concerning. Prudent mine operators already have systems of identifying, recording and correcting these conditions. Such records have a variety of names, from Comments Book to Communications Book and others. In most of these cases the existing system is likely to already fully comply with the proposal. These systems were put in place because MSHA inspectors chastised operators for continuing to record violations in the preshift, onshift, supplemental and weekly examination records. We complied with the Agency request to stop recording them in those books however did not stop the practice of identifying, reporting and correcting these conditions. Many other operators have done the same.

The proposal document states that one of MSHA's primary goals with this rulemaking is to reduce violations of mandatory health or safety standards that occur in underground coal mines year after year. That goal will only be met if the concerns around clarification of the issues we have stated are addressed. There is a real likelihood that a poorly defined rule will actually result in an operator receiving two citations for every condition. That situation must not occur. It offers no benefit to the health and safety of miners.

MSHA requested comments on the Agency's estimate of benefits, as well as supporting data.

Comment: Regarding the estimate of benefits we can only comment with regard to our knowledge of the effects expected at our organization. This operation, like most others here in District 9 already has a process in place for the identification, recording and correction of violations. The impact of this proposal on these operations will be negligible. The record books are likely to need modification to meet a new standard and possibly some other administrative type tasks. This will of course depend upon the specific elements that are promulgated in the Final Rule.

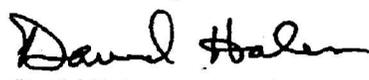
The other comment regarding the estimate of benefits is that a more accurate picture of the potential impact could be developed by looking at the period before the rule was changed and comparing this to the period following the implementation of the new rules for examinations. Upon review, one finds it very

difficult to say that safety was diminished by the change in the standard in 1994. Fatality rates have continued to fall since that time and according to MSHA data the fatal injury rate fell by over 50% just between 2003 and 2009.

San Juan Coal Company has one final area of concern regarding this rule. In the proposal document the Agency discusses the view that most preshift and onshift examinations are conducted by salaried supervisors. We want to be sure that MSHA understands that many mines have the majority of the examinations that are conducted by rank and file or hourly employees. These employees are trained and certified to conduct the examinations. This approach allows the supervisory personnel to remain on the working sections to continue to direct the workforce there. We encourage MSHA to not promulgate a rule that would prohibit a mine operator from using that approach.

San Juan Coal Company appreciates the opportunity to participate in this rule and comment process and request that these comments be given serious consideration in the development of the final rule if it is promulgated.

Sincerely

A handwritten signature in black ink that reads "David Hales". The signature is written in a cursive style with a horizontal line underneath the name.

David Hales
Manager, Safety and Regulatory Compliance
San Juan Coal Company