



## Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271  
www.dnr.illinois.gov

Pat Quinn, Governor  
Marc Miller, Director

June 3, 2011

Mine Safety and Health Administration  
Office of Standards, Regulations, and Variances  
1100 Wilson Blvd., Room 2350  
Arlington, VA 22209-3939

Re: RIN 1219-AB75

Dear Sirs,

The Illinois Department of Natural Resources' (IDNR) Office of Mines and Minerals submits the attached comments pertaining to the Mine Safety and Health Administration's proposed rule package, RIN 1219-AB75, for Examinations of Work Areas in Underground Coal Mines. As noted in the comments, the State of Illinois has many concerns pertaining to the proposed rule package and welcomes the opportunity to bring these issues to your attention.

Should you have any questions regarding the attached comments or wish to discuss this matter further, please feel free to contact me at (217) 782-0856.

Sincerely,

Joseph Angleton  
Director, Office of Mines and Minerals

JA:nb  
Attachment

TESTIMONY REPRESENTING THE STATE OF ILLINOIS  
DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF MINES & MINERALS  
CONCERNING PROPOSED RULE CHANGES IN EXAMINATIONS OF WORK AREAS IN  
UNDERGROUND COAL MINES  
RIN 1219-AB75

HEARING DATE : JUNE 7, 2011  
CHARLESTON, WV

The Illinois Department of Natural Resources' (IDNR) Office of Mines and Minerals (OMM) is charged with the responsibility of protecting the health and safety of all coal miners in the State of Illinois. This is accomplished by the strict enforcement of the Coal Mining Act (225 ILCS 705) and the Health and Safety Regulations (62 Ill. Adm. Code 220) . Our inspection force is comprised of certified State Mine Inspectors (requires Mine Examiners, Mine Managers Certificates and a total of at least 10 years of coal mining experience) that are assigned a district and are directed to inspect each mine within their district at least one inspection cycle per month. As part of the inspection cycle, Illinois State Mine Inspectors work with miners and management to ensure that the mines are all examined in their entirety each shift, even on non-coal producing days. Illinois law mandates that examinations include every active working place in the mine and that Examiners test for accumulations of methane, and other harmful or noxious gases. Examiners are to measure the air in each air split to ensure that the air is traveling in its proper course and volume. Examiners are to examine all seals (on the pre-shift, every shift), all doors affecting ventilation and are to inspect the roof and ribs at all faces and other working areas as well as travelways where miners are required to work or pass. Illinois Mine Examiners are also required to examine approaches to abandoned workings to ensure that they are still being properly ventilated. Illinois law also requires that the entire escapeway system also be examined daily. During the actual work shift, Illinois requires that a Supervisor, who is certified as a Mine Examiner, do at least one workplace examination, or more often if necessary, for the continued safety of the miners, and an additional examination by an Illinois Certified Mine Examiner before any electric equipment is taken into working face areas. Illinois Examiners are charged with the duty to mark out or danger out any conditions that they determine are hazardous or dangerous such as loose or hazardous roof, accumulations of methane or other gases, or any other dangerous condition. The results of the examination must be entered into a book kept for that purpose. Each mine's Examiners must complete the examination cycle for each pre-shift for the entire mine within the prescribed time limit (4 hours in Illinois) for the mine to be considered adequately examined. If any area is omitted from the examination or the Examiners have not completed the examination in the prescribed time limit, then the examination is declared inadequate and the entire mine must be re-examined again before work can be performed anywhere in the mine (other than the Examiners). Additionally, Illinois does not allow for "Call-



Out Examinations”, meaning that each Examiner must exit the mine to fill out the books. Transferring information by phone to another person is not permitted. We believe that this ensures inaccurate information about the examination is not passed on to the next shift.

Any miner wishing to become a Illinois Certified Mine Examiner, or supervisor, must provide evidence that he/she is at least 21 years old, of good repute and temperate habits, a citizen of the United States, has had at least 4 years of experience in underground coal mines, and possesses a First Class Miners Certificate issued by the Illinois Miners’ Examining Board. Even graduates holding a Mining Engineering Degree must have at least 2 years of actual underground mining experience before they are eligible to challenge the Illinois Mine Examiner Test. This is in sharp contrast with the Mine Safety and Health Administration’s (MSHA) standard that accepts MSHA Inspectors without any practical mining experience. In fact, many MSHA Inspectors do not qualify, from a practical work experience stand point, to be certified as an Examiner in Illinois. Any miner that meets the criteria referenced above is eligible to challenge the Mine Examiners Certification test administered by the Illinois State Mining Board. This board is responsible for overseeing all aspects of mining in Illinois and requires separate certifications for all Inspectors, Examiners, Mine Managers, Mine Superintendents, Hoisting Engineers, Shot Firers, and a variety of surface mine certifications. Miners who successfully complete the certifications process can function only with the Illinois State Mining Board’s consent. Not only are Illinois miners required to obtain certifications to perform specific job duties but they must also maintain these certifications by acceptable job performance under the watchful eyes of the State Mine Inspectors. Any charges of malfeasance by any certified person requires action by the State Mining Board and can lead to disciplinary action including suspension or complete revocation of certificates.

When studying our system objectively, it is obvious that the State of Illinois takes the process of coal mining very seriously and guards the health and safety of the miners very closely. We feel that adequate examinations are a vital part of the overall mine safety effort. **We cannot, however, agree to the proposal that is the topic of this hearing.** Primarily, the concept that Mine Examiners examine for “Violations” as part of their pre-shift or on-shift examinations we find particularly objectionable. There are several reasons for our objections and we will attempt to address them and explain our rationale.

1. Illinois Certified Examiners are certified according to Illinois mining law and established mining practices under the authority of the Illinois State Mining Board. The federal mining regulations as found in Title 30 of the Code of Federal Regulations (30 CFR) are not taught in the classes that prepare miners for Illinois Certification. Title 30 CFR is an important piece of legislation which was designed to promote safety. In reading the statute it is evident that the regulations were to be enforced by the federal government. Under the proposed rule, however, the State Certified Mine Examiners would be required to enforce the finer details of Title 30 CFR without having obtained any training. The IDNR feels that this oversteps the intent of the law and would be very unfair to the

Examiners and the mine operators, as well as to the State mine regulatory agencies. The only individuals qualified to dive into the fine details of Title 30 CFR are the people that have been hired by the federal government for that purpose, which are the Federal Inspectors. Federal Inspectors have the advantage of attending the Mine Academy (Academy) in Beckley, West Virginia where they are educated in the details of Title 30 CFR and the MSHA philosophy of mine inspections. The training received at the Academy and that which is obtained on- the-job equips Federal Mine Inspectors with the tools necessary to conduct inspections and write violations that they feel warrant a citation. The State of Illinois also puts its State Mine Inspectors through a rigorous training cycle before they are allowed to function as a stand-alone inspector, even though each of them has a minimum of 10 years of underground experience. The title of "Inspector" whether state or federal requires a stepped-up level of training that even dedicated, very experienced miners do not get during the daily routine of working in a mine. IDNR's philosophy is that experience teaches miners how to recognize obvious hazards as well as those that are not so obvious. Advanced classes can teach the proper math skills and the use of technical instruments to be able to calculate ventilation quantities and recognize potential mine gas problems. **But nothing short of being an MSHA Inspector, trained as a MSHA Inspector, can truly make an MSHA Inspector. Putting even the most experienced miners under the gun of seeing mine conditions through the eyes of a highly trained MSHA Inspector is very unfair.**

2. In Illinois, an Examiner or group of Examiners, must start and complete an examination of the entire mine within 4 hours. Examiners arriving on the surface late after their examination will cause the entire examination to be declared invalid and the entire mine to be re-examined. In Illinois, an Examiner or group of Examiners, must start and complete an examination of the entire mine within four hours. For the larger Illinois mines, this means that **each Examiner may have an examination route of several miles long that must be started and completed within the four hour window.** Illinois State Mine Inspectors adjust the length of the routes with mine management to make sure the routes are adequate as far as the distances that must be covered in relation to the time constraints. When the State Mine Inspector feels the route is too long for the Examiner to do an adequate examination, additional Examiners will be required. **Here is our second problem with the proposed rule changes. Even on an average route, an Examiner may walk and ride a combination of three miles or more to observe the hazards he has been trained to look for and to take the measurements he is required to take. However, all of this has to be completed in the time constraints of our four hour window.** An MSHA inspector has neither the distance requirements nor the time constraints to contend with. **An MSHA inspector can take an entire shift to inspect a 50 cross-cut travelway (measuring bolt spacing, checking bolt torque or header board tightness, measuring diagonals at intersections, or a number of other things**



he feels is necessary to satisfy Title 30 CFR). This travelway only makes up 10% of the Mine Examiner's route, so how can we expect the Mine Examiner or the MSHA inspector to agree on everything when one has four hours to examine three miles and the other has all day to cover fifty cross-cuts with a fine tooth comb? Again, this is very unfair and unreasonable.

3. In the background information section of the justification document for this proposal, MSHA states **"underground coal mines are dynamic work environments where working conditions change rapidly and without warning."** If this rule change is adopted, this poses another problem from our prospective. Very rarely does a Mine Examiner examine his route at the same time as an MSHA inspector does his inspection. Many times the time difference will be several hours between the times when the two people were in the same area. When the Examiner was in the area, he observed no hazards and continued his route. If an MSHA inspector goes to the same area three to four hours later and sees what he feels is a violation, according to the proposed rule changes, an additional violation will be written against the Examiner or examination for not seeing the same thing that the MSHA inspector saw. **This philosophy goes against the very statement highlighted above in MSHA's own words. We pose the question, "how can two people be expected to see the same thing in an area of a coal mine when they are looking several hours apart from each other?" We agree that "mine conditions do rapidly change," but we do not agree that a mine examiner should be held accountable for what an inspector sees during another time of day, or even a completely different day.**
4. We share in recognizing the importance of thorough mine examinations and we require a very strong commitment from all the miners that we certify. But, because of increased pressure by MSHA, we are now seeing very experienced and well qualified people decline to become certified as Mine Examiners. Recently, the Illinois State Mining Board received the credentials from 3 miners that no longer wished to maintain their Mine Examiner certifications. These miners appeared before the Illinois State Mining Board and requested that the board revoke their Mine Examiner Certificates. The board reluctantly complied with the individuals' request to voluntarily revoke their certifications. The reason for the surrender of the credentials was that the miners were fearful of action against them if they failed to see all of the things the MSHA inspectors saw along the examination routes. While we want the examiners to be thorough, it is unreasonable to require an Examiner to see identical conditions with the same priorities as an MSHA inspector. **Many of the violations written are judgment calls.** In Illinois, we have yet to see a definition of what constitutes many violations we see written. **At what point does a very small discoloration on top of the rock dust become an accumulation of combustible materials?** If a Mine Examiner witnesses a three inch

high pile of coal fines under a bottom roller of beltline with the roller still two feet above the fines, he may decide that it is not a hazard and, thus, does not record it or put it in the books. The next day, however, he finds out that his examination was declared incomplete because an MSHA inspector conducted an inspection and wrote the condition as a violation that the examiner should have seen. Our argument is that both people did see the small pile of coal fines. Now, under this proposal, one person's opinion of a condition is mandated to be the opinion of everyone and that is not humanly possible. We reiterate, concerning obvious hazards there will rarely be disagreements. However, on the finer details of Title 30 CFR, an Examiner cannot possibly satisfy the MSHA standard and should not be held accountable for having a differing opinion on a point of law. In Illinois, we have witnessed MSHA violations of toilet paper being written as combustible materials in the mine. That is not a violation that we teach miners to recognize when they take our certification test. Nor do we intend to start teaching many of the other things that our Examiners have been cited for not putting in the books. If MSHA feels that these differences in opinion are really citations and is comfortable in defending these violations, then that is MSHA's prerogative to do so. The state certified Mine Examiner should be left out of the equation. This proposal puts the Mine Examiner in an unwinnable situation and does little to nothing toward improving the safety of a mine. If an Examiner is willfully and knowingly neglecting to properly examine his assigned route, the State of Illinois will see to it that he pays the price for his negligence. **We will help MSHA purge our industry of unmotivated and ineffective Examiners. But, do not punish the vast majority of good conscientious Examiners in this country because they have a different opinion, or less time to look, or less training to satisfy an aggressive MSHA inspector.**

5. There are several other points to discuss, but we will conclude with this one. The State of Illinois has witnessed MSHA citations against Examiners and examinations being deemed "inadequate" for several years now. Our question is **"If MSHA has the authority to issue citations to the Examiners and examinations now, then why is there a need for new rule making"**? Have the MSHA Inspectors in Illinois been overstepping their legal authority to cite the examinations? We, as a state agency, have seen some MSHA Inspectors' actions that have gone beyond what we feel is the original intent of Title 30 CFR. If the proposed rule changes pertaining to mine examinations are adopted, we are concerned that highly qualified Mine Examiners will forfeit their certifications for fear of prosecution should their examination fail to meet MSHA's standard. This reaction by the certified Examiner will cause the Examiner's position to be filled by less experienced miners who will examine motivated by fear rather than a good faith search for hazards.