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Examinations of Working Places in Metal and Nonmetal Mines. 30 CFR Parts 56 and 57

Comment On: MSHA-2014-0030-0054

Examinations of Working Places in Metal and Nonmetal Mines, Extension of comment period; close of record.

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Comment from Karl Braun, Cliffs Natural Resources

Submitter Information

Name: Karl Braun

Address:

5833 Jeff Place

Minneapolis, MN, 55436

Email: karl.braun@cliffsnr.com

Phone: 218-428-4768

Organization: Cliffs Natural Resources

General Comment

See attached file(s)

Attachments

CliffsNR Comments MSHA Proposed Changes to Examination of Working Places Rule 9-29-16

AB87-COMM-58

9/30/2016

September 29, 2016

Mine Safety and Health Administration
Office of Standards, Regulations and Variances
201 12th Street South, Suite 4E401
Arlington, Virginia 22202-5452

Re: RIN 1219-AB87, Docket No. MSHA-2914-0030
Comments Proposed Rule Examinations of Working Places in Metal and Nonmetal
Mines

To MSHA:

The Mine Safety and Health Administration requested comments on proposed changes to 30 CFR 56/57.18002 Examinations of Working Places in Metal and Nonmetal Mines. Cliffs Natural Resources and its affiliates (collectively hereinafter “Cliffs”) have successfully and safely operated iron mines in the United States for more than 160 years and has a Total Reportable Injury Rate that is below the industry average. Currently Cliffs owns and operates four of the eight open pit iron ore mining and processing facilities in the U.S. employing approximately 2,300 people and producing approximately 56 percent of total U.S. iron ore pellet production. Cliffs General Managers, Area Safety Managers and corporate safety professionals provide the following comments on the proposed MSHA Examinations of Working Places in Metal and Nonmetal Mines rule.

Small vs. Large Operation, Cost and Burden Hours

MSHA requested comments on operational days per year, estimated burden hours and costs. MSHA calculated additional burden hours for examination records on the assumption that mines with 1–19 employees require one 5-minute period to record a single exam per operational day, and mines employing 20 - 500 employees and also those with more than 500 employees would require two 5-minute periods to record two exams per operational day. MSHA assumed all mines regardless of size operate only 300 days per year. MSHA’s single-exam-per-day and 300-day-per-year assumptions may be sufficient for small mines if the mine is of limited geographic size and operational complexity in terms of working places but the 300-day-per-year and two exams-per-day assumptions for large mines is not accurate. The calculations below assumes MSHA’s assumptions and calculations for mines with 1–19 employees are adequate but that MSHA’s assumptions and calculation of additional burden hours and costs to complete examination records for mines employing 20 or more are substantially underestimated.

Factor	MSHA Data/Assumptions	Large Mining & Iron Mining Condition	Rationale/Comments
Number of mines	1,162 mines with 20 to 500 26 mines employing >500	Use MSHA data on number of mines	Use MSHA data on number of mines
Number of examinations needed per day	2	Conservatively 60 to 120 examinations would be needed per day. This is based on a conservative estimate of 20 to 40 different job activities each occurring in a specific but different working place during each of 3 shifts at a typical 24/7 iron mine and ore processing operation. (20 working places/shift) x (3 shifts/day) x (1 examination/working place) = 60 examinations/day (40 working places/shift) x (3 shifts/day) x (1 examination/working place) = 120 examinations/day	Iron mines and ore processing operations operate 3 shifts per day, 365 days per year and conservatively involves 20 to 40 working places per shift each day. Other large mine and processing operations are assumed to operate in similar fashion. MSHA's estimate of only 2 examinations a day is a gross underestimation of the number of examinations required.
Operating days per year	300	365	Iron Mining and large mining operations operate 24 hours per day, 365 days per year. MSHA's 300 day per year operation estimate is not correct for large mining operations.
Time to complete the record	5 minutes	15 to 30 minutes	Working places on iron mine sites and large mining operations are physically separated by significant distances. Additional time is required to travel to and from the working place which adds to the time to properly record and administrate examination records. Additional and time will also be required to track, record and document corrective actions that are not completed immediately at the time of the examination. MSHA's 5-minute estimate to make and administer the record is too low.

Factor	MSHA Data/Assumptions	Large Mining & Iron Mining Condition	Rationale/Comments
Hourly wage for competent person	\$31.14/hour	\$51.25/hour	The 2016 average hourly rate for a miner (including benefits) based on a typical Cliffs iron mining operation is approximately \$51.25/hour. MSHA's labor rate (including benefits) is too low for large mining operations.
Corrective Action Recording	0 Minutes	5 to 15 minutes	The proposed rule requires post inspection recording of corrective action taken. This will require tracking and additional recordkeeping time. Conservatively assume time to record correcting actions is included in the 15 to 30 minute time to complete the record time shown above.
Recordkeeping Storage	None	\$1,000.00/per site	Large mine operations will require significant additional physical and/or electronic recordkeeping storage to comply with the proposed rule. MSHA did not estimate additional cost that will be required.
Communication Infrastructure	None	Cost is not estimated	Additional infrastructure and time will be required to promptly communicate findings of adverse conditions.

MSHA Burden Hour Calculation:

Mines Employing 1 to 19 employees:

10,599 mines x 1 exam/day x 300 days x 5 minutes/exam x 1 hour/60 minutes = 264,975 hours

Mines Employing 20 to 500 Employees:

1,162 mines x 2 exams/day x 300 days x 5 minutes/exam x 1 hour/60 minutes = 58,100 hours

Mines Employing > 500 Employees:

26 mines x 2 exams x 300 days x 5 minutes/exam x 1 hour/60 minutes = 1,300 hours

MSHA Estimated Total Burden Hours: 324,375 hours

Iron Mining and Large Mine Operation Burden Hour Calculation:

Mines Employing 1 to 19 employees (use MSHA assumptions and calculation):

10,599 mines x 1 exam/day x 300 days x 5 minutes/exam x 1 hour/60 minutes = 264,975 hours

Mines Employing 20 to 500 Employees (based on Large Mine/Iron Mine Condition-

(see table): 1,162 mines x 60 to 120 exams/day x 365 days x 15 to 30 minutes/exam x 1 hour/60 minutes = 6,361,950 hours to 25,447,800 hours

Revised Total Burden Hours: 6,769,245 hours to 26,282,175

Estimated Cost Calculation:

MSHA Competent Person Labor Rate: \$31.14/hour

Iron Mining and Large Miner Labor Rate: \$51.25/hour

Records Storage Hardware: (1,162 + 26) mines x \$1,000/mine = \$1,188,000.00

This assumes small mines will not incur additional records storage hardware cost but that mines employing 20 or more will.

MSHA Estimated Cost	Iron and Large Miner Cost
\$31.14/hour x 324,375 hours = \$10,188,618.75	\$51.25/hour x 6,769,245 to 26,282,175 hours = \$346,926,806.25 to \$1,346,961,468.75
Plus \$1,188,000.00 Records Storage Hardware	Plus \$1,188,000.00 Records Storage Hardware
Total: \$11,376,618.75	Total: \$348,114,806.25 to \$1,348,149,468.75

The above calculations based on conservative estimates of the time to complete and number of exams necessary to comply with the proposed changes to the Examinations of Working Places rule show that MSHA has significantly underestimated the burden hours and costs of the rule change. MSHA's two exams-per-day and 300-days-per-year assumptions for mines employing 20 to 500 and also those employing more than 500 are not realistic or adequate to accommodate large complex mines and processing operations that typically cover a large geographic area (i.e. square miles) and that have many multiple independent job activities and working places simultaneously occurring 3-shifts per-day, 365-days-per-year. The estimated costs are above \$100 million and represent economically significant regulatory action pursuant to review by the Office of Management and Budget under Executive Order (E.O.) 3(f) 128666.

Communication

MSHA solicited comments on the additional communication requirements proposed. MSHA anticipates that communication about adverse conditions and corrective actions will increase awareness and foster a culture of safety at the mine. However, the proposed requirement to *'promptly notify miners in any affected areas of any adverse conditions found that may adversely affect safety or health...'* is vague and imprecise. The term *'prompt'* is subjective and lacks a specificity, which will lead to compliance interpretive disagreements subject to the individual inspector's personal disposition and interpretation. Similarly, the phrase *'any adverse conditions found that may adversely affect safety or health'* is too broad, imprecise and subjective that will also lead to confusion and interpretive disagreement. The language requiring miner notification of *'any'* adverse condition will require a continual feed of communication concerning relatively benign conditions in an effort to ensure regulatory compliance. Hazard communication fatigue and complacency will result. Focused communication on hazards having imminent potential to injure and kill miners is prudent whereas communication on *'any adverse condition'* is not. Cliffs recommends the proposed new 30 CFR 56/57.18002 (a) (1) be deleted.

Documentation

Some adverse conditions found via the working places examination will require remedial work that cannot be completed at time of the examination and must be scheduled and completed through a maintenance work-order system. At a minimum, clarification language is needed to ensure work-orders and other maintenance tracking systems that are not directly tied to the working place examination but that are used to conduct remedial actions satisfy recordkeeping documentation required by 30 CFR 56/57.18002 (b)(2)(i-iii). While proposed documentation requirements in the Examination of Working Places rule may be feasible for small confined work sites or mines, for a large 24/7 multi-process mine operation that have multiple work crews in multiple working places completing multiple tasks 3-shifts-per-day, 24-hours-per-day, 365-days-per-year, this requirement will be onerous and overly burdensome. Additional physical equipment, methods and time would be required to collect and file the many work place exam records required by the proposed rule change. Adding documentation requirements to the existing regulation is of uncertain benefit relative to injury reduction but with certainty adds cost and regulatory compliance complexity to large mine operations. Cliffs recommends the proposed new 30 CFR 56/57.18002(a)(2)(i-iii) be deleted.

Specified Time

MSHA requested comments on whether the Agency should require that examinations be conducted within a specified time period, e.g., 2-hours before miners start work in an area. This is not practical or possible for iron mining and ore processing work operations that

occur continuously and simultaneously by multiple work crews over a combination of 1, 2, and 3-shift work schedules 24-hours-per-day and 365-days-per-year. Multiple work crews are required in multiple physically separated working places to complete many routine and non-routine work tasks each shift. It is not unusual for new work tasks and working places to originate during the course of the shift. Thus, it is not possible to predict or complete the working place examinations in advance of the shift. Compliance with the Examinations of Working Places rule necessitates that workers deemed competent to perform work must also be competent to perform a working place examinations as an initial step to work conduct which can occur anytime during the shift. Cliffs recommends that there be no specified time prior to start of work to complete the working place exam.

Competent Person

MSHA requested comments and information on whether a competent person should have a certain ability, experience, knowledge, or training that would enable the person to recognize conditions that could adversely affect safety or health and whether the Agency should require that the competent person conducting a working place examination have:

- a minimum level of experience
- particular training
- particular knowledge to identify workplace hazards.

Additional or special training should not be required to qualify a person as competent to perform a working place exam. Miners receive 24-hour new miner training (30 CFR 48.25), task training (30 CFR 48.27) and 8-hour annual refresher training (30 CFR 48.28).

Additionally, most if not all mines require personnel to have supervised hands-on experience before being authorized to conduct mining jobs. Therefore all personnel who are authorized and deemed competent to complete work on the mine site should also be considered competent to complete a working place examination. Additional or specialized training to qualify a person as competent to conduct a workplace examination is not necessary and should not be required.

Cliffs also does not agree with Program Policy Letter P15-IV-01 (issued July 22, 2015), which provides:

‘The examiner should be able to recognize hazards and adverse conditions that are known by the operator to be present in a work area or that are predictable to someone familiar with the mining industry. A best practice is for a foreman or other supervisor to conduct the examination; an experienced non-supervisory miner also may be “competent.”

Developing a safe work environment and working ‘safety culture’ relies on active acceptance of each individual’s shared responsibility for safety in the workplace. Creation of specialized jobs/tasks or personnel who are deemed qualified to conduct a workplace examinations by virtue of special training or their position (e.g. foreman or supervisor) is a step in the wrong direction and wrongly places the responsibility for safety on a select few.

This defeats development of a safe workplace and safety minded culture and should be avoided.

Iron mining involves inherently large geographic areas and multiple diverse industrial processes and tasks that occur continuously and simultaneously shift-to-shift, 24-hours-per-day and 365-days-per-year. This creates a large number of potential and simultaneously occurring working places over a large geographic area that cannot effectively or practically be completed by a select group of individuals. The dynamic operational condition necessitates that all individuals who are authorized and deemed competent to perform mining work must also be authorized and competent to perform an examination of their working places in order to comply with the rule. A safe work environment and safety minded workforce relies on each individual accepting responsibility for safety. Any specialized working place examination training can and should be incorporated in the instruction already required by 30 CFR 48.25, 27 & 28. Separate training specific to examination of working places outside of 30 CFR 48.25, 27 & 28 is not needed. Presenting the use of a supervisor or foreman as a best practice to conduct working place examinations is counterproductive and deleterious to safety culture because it suggests they are solely responsible for safety. Cliffs recommends MSHA reconsider the suggestion that use of a foreman or supervisor to conduct examinations is a best practice.

Definitions

MSHA has indicated the definition of the term 'Working Place' in 30 CFR 56.2/57.2 augmented by guidance in Program Policy Letters is adequate and will not be changed. MSHA attempts to make clarifications via Program Policy Letters but the policy letters expire without carry forward to the latest policy letter or with a direct link to the regulation. For example, the following content from Program Policy Letter P94-IV-5 was cited in the June 8, 2016 Federal Register that announced the proposed changes to the Examinations Working Places rule to clarify what is not considered a 'working place':

Excerpt from P94-IV-5: Title 30 CFR 56/57.18002 does not apply to access or other roads not directly involved in the mining process, administrative office buildings, parking lots, lunchrooms, toilet facilities, or inactive storage areas. Isolated, abandoned or idle areas of mines or mills need not be examined, unless persons perform work in these areas during the shift.

The problem is that Program Policy Letter P94-IV-5 expired on March 31, 1996, cannot be found on the MSHA website and subsequent Program Policy Letters including the most recent PPL P15-IV-01 (issued July 22, 2015) does not include the same language. Cliffs requests MSHA reconsider and add clarifying definitional language to the definitions 30 CFR 56/57.2.

Cliffs is also concerned about including travelways in the proposed rule given that there are distinct and differing definitions for travelways and working places in the Act.

Travelways are not places “where work is being performed” and should not be so considered. Workplace examinations are for areas where miners will be working and not those areas that miners use to travel to/from such work places. Requiring work place examinations of travelways (or potential travelways) to be conducted each shift would be onerous and overly burdensome for large operations and does not logically fit within the realities of day-to-day operations.

Double Jeopardy and Catch-22

Multiple rules and standards exist to help ensure safety. MSHA cited examples of three fatalities that may have been averted by workplace examination; however, each case involved violation of an existing rule or safety fundamental irrespective of completing a work place exam. For example, MSHA cites the death of a supervisor who knowingly used a defective piece of equipment. Suggesting that a work place examination would have prevented the knowing use of defective equipment is unlikely. A work place examination does nothing to modify intentional misapplication of tools, lacking safe work practices or incompetence. MSHA assumes a work place exam would have prevented two other vehicle/berm accidents yet failed to determine the root cause of why berms were not in place to begin with and why competent persons operating the equipment failed to recognize the hazards. Safe operation depends on all workers being continually aware of work conditions, having skills and experience needed to perform jobs and training to recognize and address hazards. Relying on a select few ‘competent persons’ to identify and correct adverse conditions is a poor approach and counter-productive to safety. Not only might workers get a false sense of security by assuming a work place examination was conducted but more problematic is that the rule allows workers to assign responsibility for safety to a ‘competent person’ rather than themselves. A safe work environment relies on everyone sharing the responsibility for safety.

Cliffs trains workers to use Take-5 before starting all tasks and jobs and to repeat the process as needed throughout the shift. The elements of Take-5 are:

1. Think/talk through the task at hand
2. Look for hazards
3. Assess the risks
4. Take precautions to reduce risk
5. Do the job safely

Cliffs has begun to implement a performance improvement process called Check-6 that focuses on ensuring each task is planned thoroughly, the employees are briefed on the task, it’s executed to the plan, and there is a chance to debrief after the task is complete to understand what went well and what did not. This cycle allows for continual improvement of tasks. If any employee is injured, the company conducts rigorous incident investigations to identify the root causes and implement corrective actions to prevent recurrence of the incident.

The proposed Examination of Working Places rule creates difficult and overly burdensome compliance issues for a large 24/7 complex multi-process mine operations. Additionally, Cliffs is aware that commenters at public hearings have expressed concern regarding the manner by which inspectors will use work place examinations for enforcement purposes. In fact, MSHA Program Policy Letter P15-V-01 creates a Catch-22 by suggesting hazards missed or not otherwise detected by a competent person conducting an exam indicates inadequate or missing training. Cliffs does not agree that this is always the case. Further, the proposed rule is silent regarding MSHA's ability to cite operators where a condition has been identified but not yet corrected, or where the condition has been identified and corrected.

Safe Harbor

The ability to conduct self-audits, evaluations and inspections without the onus of regulatory incrimination is an important tenet to safety and safety culture. The mining community is concerned MSHA inspectors will use examination of working places and corrective action records as a resource to issue citations and as a guide for their own inspections. Cliffs requests MSHA issue a policy statement with public comment opportunity similar to the OSHA Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits before adopting the proposed changes to the Examination of Working Places rule.

Conclusion

Cliffs supports efforts to improve the safety of miners, but opposes the adoption of the proposed rule in its current form. Cliffs appreciates the opportunity to provide its comments and looks forward to a continued role in developing and employing safe work practices in the iron ore industry.

Sincerely,



Edward M. LaTendresse
General Manager
Northshore Mining Company, Silver Bay, MN



Ronald A. Holm
Area Safety Manager
Northshore Mining Company, Silver Bay, MN

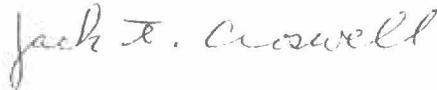
CLIFFS NATURAL RESOURCES INC.
Cliffs Mining Company
200 Public Square, Suite 3300, Cleveland, OH 44114
P 216.694.5700 cliffsnaturalresources.com



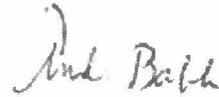
Santi H. Romani
General Manager
United Taconite LLC, Forbes, MN



Bryan L. Baird, CMSP
Area Safety Manager
United Taconite LLC, Forbes, MN



Jack T. Croswell
General Manager
Hibbing Taconite Company, Hibbing, MN



Andrea J. Bakk
Area Safety Manager
Hibbing Taconite Company, Hibbing, MN



James M. Kochevar
General Manager
Tilden Mining Company, Ishpeming, MI



Dean V. Wegleitner
Area Safety Manager
Tilden Mining Company, Ishpeming, MI



Jeffrey P. Jarvela, CSP, OHST
Cliffs Manager Health & Safety USIO
CliffsNR, Inc.



Karl O. Braun, P.E., CIH
Cliffs Sr. Manager Industrial Hygiene
CliffsNR, Inc.