



Lynn C. Busskohl
Safety Manager
Thunder Basin Coal Company
(307) 464-2109
lbusskohl@archrsc.com

November 3, 2021

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

Re: Safety Program for Surface Mobile Equipment
Docket No. MSHA 2018-0016, RIN 1219-AB91

To whom it may concern:

Black Thunder Mine submits the following comments in response to the proposed rule entitled Safety Program for Surface Mobile Equipment ("Proposed Rule"), 86 Fed. Reg. 50496 (Sept. 9, 2021).

Black Thunder Mine is one of the largest surface coal mining operations in North America. We employ over 1,000 employees and have four active pits. The mine operates 24/7, 365 days per year. Our mobile equipment count is extensive. Just the current operational production equipment consists of: 4 – draglines, 11 – shovels, 7 – large loaders, 81 – haul trucks, 22 – dozers, 15 – graders, 16 – water trucks, 7 – highwall drills, 3 – scrapers, and 4 – track hoes. The support equipment to this is nearly immeasurable. There are light plants, water pumps, fuel trucks, lube trucks, service trucks, low boy trucks, wreckers, tire handlers, boom trucks, hydraulic cranes, boom cranes, forklifts, manlifts, loaders, back hoes, tractors, floor sweepers, buses, countless trailers, and a list of light vehicles that changes weekly. An additional complication to this list is that there are different makes, models and sizes of each item.

Black Thunder believes that certain terms in the Proposed Rule should be deleted, modified, or clarified. Specifically:

- The definition of "surface mobile equipment" requires clarification, particularly as it relates to skid-mounted equipment.
- The "responsible person" provision of the Proposed Rule should be eliminated.
- MSHA should clarify that contractors are "operators" and are required to have their own written safety programs for mobile and powered haulage equipment.
- MSHA has not adequately explained how the required safety programs will result in a reduction of accidents.
- MSHA should clarify what constitutes "feasible" technologies that mine operators should evaluate for implementation.
- MSHA should accurately evaluate the cost of implementing the requirements of the Proposed Rule.

1. MSHA should clarify that "surface mobile equipment" does not include certain types of skid-mounted equipment.

The Proposed Rule states that "surface mobile equipment" is defined as "wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved, and any powered equipment that transports people, equipment or materials, excluding belt conveyors, at surface areas of underground metal and nonmetal

mines.” 86 Fed. Reg. at 50500. MSHA should clarify that this definition does not include light towers, cable towers, substations, breaker houses, and other equipment of this type.

2. The “responsible person” provision of the Proposed Rule should be stricken.

The Proposed Rule includes a requirement that operators designate a “responsible person” who would “have the authority and responsibility to evaluate and update a written safety program for surface mobile equipment.” 86 Fed. Reg. at 50500. This provision serves no purpose since the Mine Act is a strict liability statute – operators are required to comply with MSHA standards regardless of the actions taken by their individual employees. Additionally, MSHA’s regulations already require an operator to identify “the name and address of the person at the mine in charge of health and safety” or “the name and address of the person with overall responsibility for a health and safety program at all of the operator’s mines, if the operator is not directly involved in the daily operation of the mine.” 30 C.F.R. Sections 41.11(b)(3) and (4). Therefore, an operator is already required to name what is effectively a “responsible person” for safety and health, a separate designation of a responsible person for the purposes of the Proposed Rule is redundant.

Furthermore, the Proposed Rule would require a person that has the knowledge to identify hazards on every piece of mobile equipment, the authority to make high level financial decisions, and the responsibility of any shortfalls in the program. This position does not currently exist at the mine. The Proposed Rule essentially requires the creation of an additional full-time position, so there is a significant cost to that. The average wage at this mine is over \$76,000, but a person with this level of authority would likely exceed the \$100,000 range. This person would be an agent of the company for any mobile equipment accident and the first name on the list for legal action. There is also the question of being in violation whenever this job is vacant. This position will be nearly impossible to backfill.

Since there is no one person that could know the risks associated with all the different equipment; it will take a team. The cost of taking people from their jobs to work on this plan has not been addressed. It will also not just be a one-time obligation, but an annual one, at the very least.

3. MSHA should clarify that contractors are “operators” and are required to have their own written safety programs for mobile and powered haulage equipment.

The definition of “operator” at section 3(d) of the Mine Act includes “any independent contractor performing services or construction” at a mine. 30 U.S.C. section 802(d). Thus, the Proposed Rule should clarify the effect of the requirements on independent contractors. Black Thunder has contractors that perform blasting, topsoil removal, equipment maintenance, security, train loading, janitorial service, coal treatment, tire repair, equipment lubing, and lab work. There are generally over 200 contractors on site per day. The Proposed Rule is silent whether it intends to cover contractor equipment and how that would work in a practical sense. There is nothing determining if they would have to meet requirements set by the mine site they are on. Contractors will likely quantify risks and justify new technology differently than the mine. This would likely lead to enforcement action against the mine and/or a contractor for inconsistencies in their programs.

4. MSHA has not adequately explained how the required safety programs will result in a reduction of accidents.

In promulgating a rule, an agency is required to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choices made.’” Nat’l Mining Ass’n v. Sec’y of Labor, 812 F.3d 843, 865 (11th Cir. 2016) (quoting Motor Vehicle Mfrs. Ass’n of U.S. Inc. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29 (1983)). The Proposed Rule provides no explanation as to why this program will be effective in reducing mobile equipment-related accidents and injuries. 30 CFR already mandates numerous policies and procedures, such as the Ground Control Plans, Training Plans, and the safety procedures for 77.1708. The

requirements of Part 77, specifically Subparts E and Q, already cover hazard prevention for surface mobile equipment. This proposed procedure will be overlapping numerous portions of these existing plans and procedures.

5. MSHA should clarify what constitutes “feasible” technologies that mine operators should evaluated for implementation.

There is no guidance on determining what level of risk requires action, or the cost/benefit of taking that action. The same goes for identifying emerging technology. Not only is there no way to identify the feasibility of the technology, but once something is selected, there are the complications of testing time, product availability, and installation on all the similar equipment. One would assume that operating any similar equipment, while waiting for a modification that has been determined to correct a risk, would meet some degree of unwarrantability. This would especially come into play if an accident occurred. There is also the potential of technology not working properly, requiring operators to reverse an implementation decision.

6. MSHA should accurately evaluate the cost of implementing the requirements of the Proposed Rule.

The cost theory of this program is flawed. The \$500 initial cost would not cover a simple rear-view camera installation. MSHA states there would be no costs on new technology after the second year, because it falls under other MSHA standards. However, repairing and maintaining a new piece of safety equipment is an added cost, for the life of that equipment, regardless of what standard it falls under. I can assure you that mining conditions and Wyoming weather take a toll on any kind of electronics or sensors.

The project costs are grossly underestimated. The projections indicated 95 development hours at \$65.10 (\$6,184.50) and 30 clerical hours at \$31.46 (\$943.80). First off, there are no current employees with this much spare time. So, these people need to be added to the workforce or the operator pays multiple people overtime wages to work on it. 95 hours might be enough time to evaluate a few types of equipment, but not 30 plus types of equipment.

Another significant cost is training on the program for all employees, for every type of equipment they run, with annual update training and occasional training on changes. The Proposed Rule indicates that training would be covered by existing training programs, however, most production employees operate from 4 to 10 pieces of equipment, some can operate more. Maintenance employees can run every type of equipment they work on, to check for proper operation. The Proposed Rule states that all employees shall be trained on the program, so even if the training could be done in one hour, 1,000 employees at an average wage of \$36 per hour, would be over \$36,000, not counting instructors. Then add the lost production of each employee or the cost of backfilling those people at time and a half. Not to mention four crews, people off for various reasons, and the make-up training that would be required.

Thank you for the opportunity to provide comments on MSHA’s proposed Safety Program for Surface Mobile Equipment. Black Thunder Mine asks that the agency considers how operators would meet these many requirements and reconsider the Proposed Rule accordingly.

Respectfully,

Lynn C. Busskohl