

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
TESTING AND EVALUATION BY)
INDEPENDENT LABORATORIES AND NON-)
MSHA PRODUCT SAFETY STANDARDS.)
)

Pages: 1 through 10
Place: Washington, Pennsylvania
Date: January 9, 2003

HERITAGE REPORTING CORPORATION

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IN THE MATTER OF:)
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TESTING AND EVALUATION BY)
INDEPENDENT LABORATORIES AND NON-)
MSHA PRODUCT SAFETY STANDARDS.)
)

Room Gallery A
Meadowlands Holiday Inn
340 Racetrack Road
Washington, Pennsylvania

Thursday,
January 9, 2003

The parties met, pursuant to notice of the
Department of Labor, at 9:00 a.m.

1 Opening Statement

2 Washington, Pennsylvania

3 January 9, 2003

4 Public Hearing -- Independent Laboratories

5

6 MR. CHIRDON: Today is January 9, 2003 and it's
7 9:00 a.m. and we're at the Meadowlands Holiday Inn in
8 Washington, Pennsylvania. Good morning. My name is Dave
9 Chirdon and I'm the Chief of the Electrical Safety Division
10 at MSHA's Approval and Certification Center. I'll be the
11 moderator today for this public hearing on the testing and
12 evaluation by independent laboratories and non-MSHA product
13 safety standards, also referred to as Part 6.

14 On behalf of Dave Lauriski, the Assistant
15 Secretary of Labor for Mine Safety and Health, I'd like to
16 welcome all of you here today. Also sitting with me at the
17 table from MSHA starting on my far right is Bud Page, Chief
18 of the Intrinsic Safety Branch at the Approval and
19 Certification Center; Ros Fontaine, she's our International
20 Rep for the Office of Technical Support; Linda Fort is with
21 the Office of the Solicitor; Ron Ford is from our Office of
22 Standards, Regulations and Variances, he's our Economist;
23 Herman Narcho is also with the Office of the Solicitor, and
24 Debra James is the Reg Specialist from the Office of
25 Standards, Regulations and Variances.

1 This is the second of two hearings on the proposed
2 rule that would offer applicants for MSHA product approval,
3 alternate requirements for testing and evaluation of
4 products that MSHA approves for use in underground mines.
5 The first hearing was held on Tuesday, January 7, 2003 at
6 the DoubleTree Hotel Denver in Denver, Colorado.

7 The initial announcement of these two rulemaking
8 hearings was contained in the Notice of Proposed Rulemaking
9 published on October 17, 2002 in the Federal Register.
10 Copies of this Federal Register document are available in
11 the back of the room.

12 The purpose of these hearings is to receive
13 information from the public that will help us evaluate our
14 proposed rule. The scope of the issues we are addressing
15 with this proposed rule are well defined and this hearing
16 will be limited to soliciting public input on these issues.

17 We welcome comment on two issues in particular,
18 whether or not manufacturers of certain products who seek
19 MSHA approval would use an independent laboratory to perform
20 in whole or part the necessary testing and evaluation for
21 approval; and whether or not manufacturers would have their
22 products approved based on a non-MSHA product safety
23 standard once MSHA determines such standard to be equivalent
24 to MSHA product approval requirements. These two issues
25 were discussed in the October 17th Federal Register

1 document.

2 I'd like to give you some background that led us
3 to this revised proposed rule. Under the Federal Mine
4 Safety and Health Act of 1977, MSHA is responsible for
5 prescribing the technical design, construction and test
6 requirements for certain products using gassy underground
7 mines and for testing and evaluating them for MSHA approval
8 based on these requirements. These technical requirements
9 are set forth in the Agency's approval regulations in Title
10 30 of the Code of Federal Regulations, also referred to as
11 30 C.F.R. pt. 7-36.

12 MSHA currently charges applicants a fee for the
13 testing and evaluation of products submitted for MSHA
14 approval. Following MSHA approval, manufacturers must
15 ensure that the product continues to conform to the MSHA-
16 approved specifications.

17 In the mid-1980s, MSHA reviewed its product
18 approval program to determine whether it could be
19 restructured to provide improved safety to miners without
20 increasing costs to the applicant. That review resulted in
21 the promulgation of 30 C.F.R. pt. 7, Testing by Applicant or
22 Third Party. Part 7 represented MSHA's first departure from
23 its role of front-end testing of products for approval. It
24 substituted manufacturer or third-party testing of a limited
25 number of products for testing that previously had been

1 conducted by MSHA.

2 In 1993, MSHA initiated a further review of its
3 approval and certification activities including its Part 7
4 applicant or third-party testing program. Based on that
5 review, the Agency reaffirmed the objectives of the Part 7
6 concept to increase postapproval product audits and direct
7 more resources to evaluation of safety and technological
8 improvements in products underground.

9 However, MSHA determined that while the Part 7
10 program was a step in the right direction the limited scope
11 of that program did not free up sufficient resources to
12 allow MSHA to fully redirect its efforts to meet these
13 objectives. After considering how best to accomplish those
14 goals, the Agency decided to initiate rulemaking to modify
15 MSHA's approval program.

16 In 1994, MSHA issued a proposed rule that would
17 have required testing and evaluation to be performed by
18 nationally recognized testing laboratories otherwise known
19 as NRTLs instead of testing an evaluation by MSHA. In
20 addition, a 1994 proposed rule would have allowed applicants
21 to request MSHA product approval based on approval
22 requirements other than MSHA's as long as those requirements
23 provided at least the same degree of protection as MSHA's
24 product approval requirements. MSHA would have continued to
25 verify that approval requirements were met and would have

1 retained full responsibility for issuing product approvals.

2 Based on comments received from the public to the
3 1994 proposed rule, the revised proposal provides a number
4 of revisions to the original. The major changes are (1) the
5 revised proposal would be voluntary. Manufacturers could
6 choose to use independent laboratories to perform all of
7 part of their testing and evaluation necessary for approval
8 or they could elect to have MSHA perform the necessary
9 testing and evaluation; (2) applicants would not have to use
10 only independent laboratories that are nationally recognized
11 testing labs under OSHA's program but could choose an
12 independent laboratory recognized by other laboratory
13 accreditation programs such as that of the American National
14 Standards Institute, known as ANSI, or the International
15 Electrotechnical Commission, known as the IEC; (3) only MSHA
16 would conduct required postapproval product audits. Audits
17 conducted by independent laboratories would not be required
18 under the revised proposal; (4) only the MSHA mark would be
19 required on MSHA-approved products and not both the MSHA and
20 independent laboratory mark.

21 Finally, the revised proposal would allow public
22 input into the process of making equivalency determinations
23 of non-MSHA product safety standards. MSHA would notify the
24 public through publication in the Federal Register of MSHA's
25 intent to review a particular non-MSHA standard for

1 equivalency and provide an opportunity for public input on
2 that issue. However, like Part 7 under both the 1994
3 proposed rule and this revised proposal, the review of any
4 testing and evaluation performed by independent laboratories
5 and the issuance of the MSHA product approval would still
6 remain the full responsibility of the Approval and
7 Certification Center.

8 The issues surrounding the use of independent
9 laboratories and of non-MSHA product safety standards are
10 important to MSHA. We will use the information provided by
11 you to help us decide how best to proceed in this
12 rulemaking. These two hearings will give manufacturers,
13 mine operators, miners and their representatives and other
14 interested parties an opportunity to present their views in
15 this revised proposed rule.

16 To date we have received two comments on this
17 proposal. Copies of these comments are located on the table
18 at the entrance to this room. If you prefer, you can view
19 these comments on our website at the following address:
20 www.msha.gov\regs\comments\indlab\indlabedocket.hotm. This
21 address is written on the board to the side here and it's
22 also printed in the opening statement which you can get a
23 copy of at the back table.

24 The format of this public hearing will be as
25 follows: Formal Rules of Evidence will not apply and this

1 hearing will be conducted in an informal manner. No one has
2 notified MSHA in advance of their intent to speak. Anyone
3 that is signed up today to speak will make their
4 presentations first. After all speakers are finished,
5 others can request to speak. When the last speaker is
6 finished we will conclude the public hearing. The hearing
7 will end no later than 5:00 p.m.

8 If you wish to present any written statements or
9 information today, please clearly identify your material.
10 When you give it to me, I'll identify the material by the
11 title as submitted. You may also submit comments following
12 this public hearing. Please submit them to MSHA by February
13 10, 2003 which is the close of the posthearing comment
14 period. Comments may be submitted to MSHA by electronic
15 mail at comments@msha.gov, by fax at (202) 693-9441, or by
16 regular mail or hand-delivery to MSHA, Office of Standards,
17 Regulations and Variance, 1100 Wilson Boulevard, Room 2352,
18 Arlington, Virginia 22209-3939.

19 A verbatim transcript of this public hearing will
20 be available upon request. If you want a personal copy of
21 the hearing transcript please make arrangements with the
22 court reporter. MSHA will post verbatim transcripts of both
23 the Denver and Washington, Pennsylvania public hearings on
24 it's website. They should be posted there approximately one
25 week from today.

1 We will begin with persons who have requested to
2 speak. Please begin by clearly stating your name, spelling
3 your last name and stating your organization for the record
4 to make certain we obtain an accurate record when you speak.

5 At this point we have not received anyone that's
6 requested to speak. Would anyone like to make any comments?

7 (No response.)

8 MR. CHIRDON: Okay. We're going to close the
9 record at this point and we'll reopen at 11:00 a.m. in case
10 anyone else has shown up.

11 (Whereupon, a short recess was taken.)

12 MR. CHIRDON: Okay. The time's 11:00 a.m. for the
13 Part 6 hearing and for the record nobody has shown up from
14 the previous discussion, so we're going to close the record
15 at this time.

16 (Whereupon, at 10:58 a.m. the hearing in the
17 above-entitled matter was adjourned.)

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REPORTER'S CERTIFICATE

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DOCKET NO.: N/A
CASE TITLE: Opening Statement Independent Laboratories
HEARING DATE: January 9, 2003
LOCATION: Washington, Pennsylvania

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Public Hearing - Independent Laboratories.

Date: January 9, 2003

Joel Rosenthal

Official Reporter

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