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Sent: Wednesday, September 08, 2010 2:03 PM
To: EP, RegComments
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Subject: Pa Coal Assn Comments Chapter 208 Und Coal Mine Safety
Attachments: PACOAL~2.DOC

TO: Board of Coal Mine Safety
Email: RegComments@state.pa.us

cc: Scott Roberts
Joe Scaffoni
PCA Safety Committee

FROM: George Ellis
President, Pennsylvania Coal Association

RE: Notice of Proposed Rulemaking
(25 Pa Code Chapter 208)
(Underground Coal Mine Safety)

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Attached are the comments of the Pennsylvania Coal Association to the proposed amendments to DEP's regulations at 25 Pa Code Chapter 208. The proposed regulations establish safety standards for belt conveyor flammability; the design installation and maintenance of mine seals for abandoned areas; escapeways; emergency response, and self-contained self-rescue devices.

Please contact me if you have any questions on these comments.

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George L. Ellis
President

September 8, 2010

Board of Coal Mine Safety
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RE: Rulemaking: Chapter 208 Underground Coal Mine Safety (25 Pa. Code Chapter 208)

The Pennsylvania Coal Association (“PCA”) is pleased to offer the following comments to the Board of Coal Mine Safety (“Board”) concerning its proposed rulemaking concerning a number of underground coal mine safety issues, including seals, conveyor belts, emergency evacuation and SCSRs.

PCA is an association that represents the majority of underground and surface coal mine operators in Pennsylvania. PCA represents operators of large and small underground bituminous coal mines that account for nearly 85 percent of Pennsylvania’s total annual underground coal production. The mines of our members are routinely inspected by the Bureau of Mine Safety and MSHA.

The Board of Coal Mine Safety has proposed regulations concerning belt conveyor flammability, the design, installation and maintenance of mine seals, escapeways, emergency response, and self-contained self-rescue devices. The proposed rules incorporate by reference some of the safety standards adopted by the Mine Safety and Health Administration (“MSHA”) found in 30 C.F.R. Part 75 on these issues. The MSHA standards being incorporated by reference also implement some of the requirements established by MSHA in accordance with the

Mine Improvement and New Emergency Response (“MINER”) Act of 2006 (MINER Act).

In general the Board proposes to incorporate MSHA standards by reference, rather than by rewriting the safety standards. We agree with this approach.

This proposed rulemaking is more stringent than the MSHA regulations in some respects and in general PCA believes that uniformity with MSHA standards is the appropriate course. Uniformity is important in achieving compliance and differing standards lead to confusion in the regulated community. It appears from reading the preamble to the regulation that DEP also agrees with this position. On Page 3, DEP explains that, “Adopting the MSHA regulations by reference will enhance safety at underground coal mines because the potential for confusion by operators as to the appropriate safety standard is minimized.”

Definitions

The Board has included definitions from the Bituminous Coal Mine Safety Act (BCMSA”) with the exception of the definitions of “overpressure and SCSRs.” We do not believe that it is either necessary or appropriate to adopt definitions that are already contained within the BCMSA. We further believe that the definition of overpressure that is proposed needs modification before it is adopted by the Board.

“Overpressure” is defined in the proposed rules as “the highest pressure over the background pressure that could result from an explosion, which includes the impact of the pressure wave on the object.” “Overpressure” simply refers to an increased pressure that may be associated with an event such as an explosion. Defining “overpressure” as the “highest pressure” may mislead persons in the regulated community. This definition does mirror that contained in 30 C.F.R. § 7.502, but PCA is unclear why it is believed necessary. Also, as used in the proposed regulations, it appears that overpressure is not used as it is defined and we believe that may lead to confusion. Otherwise, since it is the federal definition, we would not otherwise object to it.

Access to Documents by DEP

The proposed rules have a provision that requires an operator to submit to DEP a copy of any “application, report, plan or other material submitted to MSHA pursuant to a regulation” either where submission is required by the Pennsylvania regulations or at the request of MSHA. While the proposed regulation appears to be limited to those items already submitted to MSHA, we believe that the

regulation is unnecessary because the BCMSA contains the provisions of what must be provided to the DEP and to miner representatives.

Seals

The Board has proposed incorporating by reference some of the MSHA rules on seal strengths and installation. While the Board has proposed adopting MSHA standards with respect to 120 psi seals in Section 208.11(a), it proposes that the regulations will eliminate the option of using 50 psi seals. Further, the proposed regulations do not provide for “grandfathering” existing 50 psi seals. The proposed regulations adopt the MSHA sampling and monitoring requirements, which might be read to suggest that existing 50 psi seals are acceptable but that is unclear.

PCA believes it would be better to permit the installation of 50 psi seals on an ongoing basis. There are situations where the use of 50 psi seals is appropriate because of a short term life of the sealed area (i.e. outby seals are planned at a later date to seal a larger area). Given the restrictions on continuing operation with 50 psi seals (e.g. monitoring, evacuation), it should be the operator’s choice based upon mine planning as to which sort of seals are utilized. It may be that the inability to use 50 psi seals will postpone the sealing of some areas of mines which could have an adverse effect upon safety because of the need to continue to examine older works where roof and other conditions may be adverse.

50 psi seals will contain the majority of explosions unless an aberrational situation occurs, such as did at the Sago Mine on January 2, 2006. That explosion was estimated to have forces of 90 psi but a review of the literature of mine explosions indicates that mine explosions do not normally generate such forces. The 90 psi pressures at Sago are the highest pressures in a mine explosion in the United States, except for those in shafts. See NIOSH IC 9500 “Explosion Pressure Design Criteria for New Seals in U.S. Coal Mines,” Table 2.

MSHA requires a 120-psi seal if the abandoned area’s atmosphere is not inert. A 50-psi seal is allowed by MSHA if the atmosphere in the abandoned area is inert and requires regular monitoring from within the sealed area to ensure it remains inert. PCA strongly supports adoption of the MSHA standards on seal strength including 50 psi seals. The regulatory authority should not insert its opinion as to the “best” option for an operator without substantiated documentation beyond vague references to the “Department’s experience” but should provide the operator with options and the potential risks that are part of each option. In this case, provided the operator understands the implication of the sampling

requirements behind 50 psi seals and the potential effect on the mine's operations then the choice of seal design should be the operator's. While the Board is correct in that sampling does not necessarily include the entire sealed area, it samples the area closest to the seal which is the area where there is likely to be air exchange between the sealed and unsealed areas. This results in a relatively small area of concern. PCA believes that the entire sealed area is not affected by the air exchange through the seals.

Given the requirements in 30 C.F.R. § 75.336 and the very conservative approach MSHA adopted to the levels of methane and oxygen that prompt evacuation of the mine it seems to PCA that the MSHA requirements concerning 50 psi seals could readily be adopted. By "conservative" PCA means that MSHA requires evacuation of an entire mine based upon oxygen levels of 10% which is well below the explosive range and methane at levels above and below the explosive range. See 30 C.F.R. § 75.336(c). Moreover, it requires evacuation of the whole mine even when the seals are very distant from active mining areas.

The Board does not propose that DEP approve seal design. It does require approval of the plan for installation. DEP believes that pursuant to Section 235 (regarding unused and abandoned parts of mines) of BCMSA, 52 P.S. § 690-235, it has authority concerning sealing of abandoned parts of mines. The language concerning the "application for installation" in the proposed regulation is ambiguous and could be read that DEP is approving the seal design and the installation. Proposed Section 208.11(d) reads as follows:

(d) Seal installation approval. The operator shall submit an application to install the MSHA-approved seal design to the Department for its review and approval.

We believe that this will need to be clarified by adding "concerning installation" after "approval."

The Board proposes to adopt MSHA's rules in 30 C.F.R. § 75.338 concerning training on seals installation. While this is the same rule as MSHA's, that rule itself concerning the training of "senior management" is ambiguous. It is not clear who must in fact be trained and when they must be trained. Some consideration to clarifying this might be given. Section 75.338 reads as follows:

(a) Certified persons conducting sampling shall be trained in the use of appropriate sampling equipment procedures, location of sampling points, frequency of sampling, size and condition of the

sealed area, and the use of continuous monitoring systems if applicable before they conduct sampling, and annually thereafter. The mine operator shall certify the date of training provided to certified persons and retain each certification for two years.

(b) Miners constructing or repairing seals, designated certified persons, and senior mine management officials shall be trained prior to constructing or repairing a seal and annually thereafter. The training shall address materials and procedures in the approved seal design and ventilation plan. The mine operator shall certify the date of training provided each miner, certified person, and senior mine management official and retain each certification for two years.

The Board proposes to adopt 30 C.F.R. § 75.337 but to modify it to require DEP approval for welding and cutting and soldering within 150 feet of the seals. 30 C.F.R. § 75.337 already requires MSHA approval and PCA would submit that is adequate. PCA would have no objection to providing a copy of such a plan to the miner's representative as specified in Section 218.13(b)(1). It does not believe that Sections 218.13 (b) and (b)(2) are necessary.

The provision with respect to records for seals and access to records by DEP and miners' representatives is acceptable and consistent with the BCMSA.

Escapeways

The Board proposes to adopt MSHA's rules with respect to escapeways as well as longwall travelways. PCA supports adoption of the federal rules so long as it is made clear that the designation of escapeways under the regulation is in lieu of the escapeway identified in Section 230 of the BCMSA and the travelways in Section 274 of the BCMSA. Adoption of the federal rules will include far more stringent requirements than the BCMSA. Adoption of the federal rules in lieu of the existing BCMSA provisions will not result in a compromise in safety as described in Section 106.1(g) of the BCSMA because of the additional requirements for maintenance of lifelines, marking, etc. For that reason PCA would propose that Section 208.21 (a) read as follows:

Bituminous mines. The provisions of 30 C.F.R. 75.380 (relating to escapeways: bituminous and lignite mines) are incorporated by reference. An operator may designate escapeways as specified therein in lieu of the escapeway described in Section 230 of the BCMSA and the travelways specified in Section 274 of the BCMSA.

There are two significant differences from the proposed rules and MSHA's rules. The first is a provision that two escapeways can not end at a multiple compartment shaft or slope separated by walls. We believe that this modification is unnecessary from a safety standpoint as well as a statutory interpretation standpoint. This is an attempt to incorporate for escapeways the provisions of Section 274 of BCMSA about multiple openings. PCA believes that Section 274 does not in fact address escapeways and that permitting escapeways to end at multiple compartment shafts or slopes will bring miners out of the mine by the shortest route, if that happens to be a dual compartment shaft or slope is safer.

One additional difference is that if a blockage in the longwall travelway occurs DEP must be notified in addition to MSHA. While there is no time requirement on such notification, it is possible that DEP will take the position that this must occur within 15 minutes as it has with other types of "accidents" and we believe that this should be clarified in the rule. We suggest that language to Section 218.21(c) be added that it should be reported to DEP by the end of the shift on which it occurs.

Conveyor Belts

The proposed rules adopt the new MSHA belt conveyor belt flammability standard. We believe this is appropriate. The proposed regulation also adopts the belt maintenance standards and PCA supports this sort of across-the-board adoption.

The proposed rule further proposes a rule that requires persons doing preshift examinations and supplemental examinations to "address compliance with this section's maintenance requirements." PCA believes this provision is not appropriate. The conveyor belts are not always operating during examinations which would make difficult, if not impossible, to identify the sorts of conditions described by the regulation. Further, it will treat one malfunctioning conveyor roller potentially as a hazard and we believe that is not appropriate. This type of condition is often a maintenance issue, as opposed to a safety issue. Further the proposed rule would shift the focus of examinations away from the traditional issues such as accumulations of methane and bad roof conditions to conditions that are not an immediate hazard. There may be occasions when defective rollers or similar issues present an immediate hazard that an examiner must address but the focus of the examination should be on hazards and not specifically on belt maintenance issues. PCA believes that Section 208.32 should be deleted.

Emergencies

The Board proposes to adopt 30 C.F.R. § 75.1501 as to mine emergencies but requires that a person to take charge in an emergency must remain on the surface in addition to the “responsible person” described in the federal standards. This obviously means that the responsible person on the surface cannot be the shift foreman or similar person if they are expected to go underground during any given shift. We do not believe that the inclusion of this requirement is appropriate. This is especially true, given the improved communication and tracking requirements that have been adopted under the federal MINER Act. The whereabouts of the responsible person, should he be underground, will be known to the person on the surface and the surface personnel will be able to communicate with him. It is important that, in many instances, the person who directly responds to an emergency be a person in the chain of supervision at the mine. This provision could be revised as follows:

Individual located on the surface. An individual designated by the mine operator shall be located on the surface during all shifts. Such person will be trained in emergency response notification procedures.

The Board has proposed adopting MSHA’s rules on the emergency evacuation and firefighting program of instruction, the use of fire suppression equipment (which requires persons knowledgeable in the use of such equipment be present on the working section and at attended equipment), emergency evacuation training and drills, escapeway maps, refuge alternatives, emergency response plan, training and records for examination, maintenance and repair of refuge alternatives. PCA believes such adoption is appropriate.

Communications

The Board proposes to adopt the MSHA standards relating to communications facilities for refuge alternatives. PCA believes such adoption is appropriate.

SCSRs

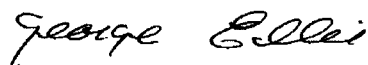
The Board proposes to adopt MSHA’s standards on availability and instruction on the use and location of SCSRs, approved SCSRs, inspection, testing and maintenance of SCSRs, additional SCSRs, map locations and emergency tethers. The Board also proposes to adopt the MSHA requirements concerning the reporting of SCSR malfunctions and inventory. It does not adopt a separate

requirement that an inventory be maintained for state purposes and PCA supports such an approach. Such a requirement would only lead to confusion if a separate inventory is maintained.

The Board proposes to adopt MSHA rules providing miners with multi-gas detectors. While PCA believes such a requirement is appropriate it believes that it needs to be clarified that the provision of the detectors is for the purposes of use during an emergency. MSHA has taken the position that the detectors to be turned on all the time and actually on the person of the miner (as opposed in his vehicle for example). The standard says ‘provide” a detector but MSHA is interpreting as ensuring the miner has it turned on and on his person. The problem of course is that if an event occurs toward the end of the shift such detectors will have limited battery life and limited usefulness in the emergency situation. We believe that the standard should be revised to state that the detector is to be “provided for use in an emergency.”

Thank you for the opportunity to comment on this rulemaking. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "George Ellis".

George Ellis
President, Pennsylvania Coal Association