



West Virginia State Board of Registration  
for Professional Engineers

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August 14, 2007

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

Re: Docket No. RIN 1219-AB52  
An emergency temporary standard (ETS) on sealing abandoned areas in coal mines published by the Mine Safety and Health Administration (MSHA) on May 22, 2007 at 72 Federal Register 28796.

To Whom It May Concern:

Engineers registered with the West Virginia Board of Professional Engineers requested that we review the current MSHA Emergency Temporary Standard (ETS) regarding the design and installation of mine seals. While the Board does not customarily get involved with the promulgation of other agencies' rules, the Board is concerned that there may be a conflict between MSHA's ETS proposals and WV Engineering Law.

It is our understanding that the ETS could require professional engineers to put their engineering seal on mine seal designs that were not prepared under their complete direction and control. West Virginia Code §30-13-16 (c) specifically addresses this:

“Whenever presented to a client or any public or governmental agency, the seal signature and date shall be placed on all specifications, reports, drawings, plans, design information and calculations in accordance with rules promulgated by the Board. The seal and signature shall be used by registrants only when the work being stamped was under the registrant's complete direction and control.”

Penalties for actions that threaten the public health, safety and welfare can range up to \$15,000. Penalties for misuse of seal can range up to \$5,000. Either violation can result in the suspension and/or revocation of their license.

It is also our understanding that no changes can be made to the seal design once it is approved by MSHA even if field conditions change. This potentially ties the hands of the engineer which could lead to the installation of an unsafe mine seal or require the engineer to violate the ETS. Neither of these are desirable outcomes and we believe this is not the intent of MSHA. We request that engineers be allowed to perform their work in the same professional manner they always have when addressing necessary field changes.

1219 AB52 - COMM - 005

The Board reviewed these issues in detail at their July meeting and adopted the following position statement:


**WV Board of Engineers Position on Mine Seals**

In the interest of public health and safety it is the position of the West Virginia State Board of Registration for Professional Engineers that:

- The design of mine seals for use in West Virginia is engineering work and requires that the work be done by a registered West Virginia professional engineer (WVPE).
- Under WV engineering law an engineer may only seal work done under his/her complete direction and control
- Prior to sealing a document the WVPE must satisfy himself that the design is safe. Therefore his/her design must be flexible to meet existing conditions in order to meet the WVPE's safety responsibility.
- Additionally because field conditions change the WVPE must be allowed to make the necessary field changes to meet those conditions in order to protect the public safety.

We strongly request that MSHA change the ETS to reflect both the Board's position and West Virginia Law. Thank you for your time and attention to this matter.

Sincerely,



Leonard J. Timms, Jr. P.E.  
Board President

CC: Ronald Wooten - Director WV Office of Miners Health, Safety and Training  
Monty Hieb – Chief Engineer WV Office of Miners Health, Safety and Training