



# Interstate Mining Compact Commission

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## Statement of

**Ronald L. Wooten**

**Director, West Virginia Office of Miners' Health, Safety and**

## Training

## On Behalf of

**The Interstate Mining Compact Commission**

**Re: MSHA ETS on Mine Seals**

**July 10, 2007**

AB52-HEAR-1C

**Good morning. My name is Ron Wooten and I am the Director of the West Virginia Office of Miners' Health, Safety and Training. I am appearing today on behalf of the Interstate Mining Compact Commission. West Virginia's Governor, Joe Manchin III currently serves as Chairman of IMCC. IMCC is a national, multi-state governmental organization representing the natural resources, environmental protection and mine safety and health interests of its 24 member states. Several IMCC members implement their own mine safety and health regulatory programs, as we do in West Virginia, and almost all of the states carry out training responsibilities pursuant to the Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006 (the MINER Act).**

**My purpose today is to provide some preliminary comments on the emergency temporary standard on sealing of**

**abandoned areas published by the Mine Safety and Health Administration (MSHA) on May 22, 2007 at 72 Fed. Reg. 28796. While we can appreciate MSHA's desire to move expeditiously to address the requirement in section 10 of the MINER Act to issue mandatory health and safety standards for seals of abandoned areas, we believe that the emergency temporary standard (ETS) begs as many questions as it answers. Part of this results from the interaction between the ETS and its accompanying preamble and other MSHA documents such as program information bulletins (PIBs), procedure instruction letters (PILs), and various documents contained on MSHA's website (such as mine seal design and approval requirements). These latter documents expand upon (and at times contradict) the ETS and essentially raise policy and technical documents to the level of a rule without following APA rulemaking requirements.**

**Given the overlap between MSHA's rules and state regulatory programs, it is critical that MSHA work with the states to clarify and resolve any conflicts or confusion attending implementation of the ETS. Many of the questions and concerns that we articulate below could have been avoided (or answered) had MSHA done more in the way of outreach to the states in developing the ETS. At this point, it will be incumbent on the agency to work closely with the states to either revise the rules or provide additional background information so as to insure effective implementation of the ETS.**

**My testimony will address several topics that are raised in the ETS including existing seals, new seals, and the certification process.**

### **Existing Seals**

**Given the implications for the safety and health of miners, we agree with MSHA that replacing existing seals may be impractical and may create safety hazards. We also agree that seals do not need to be universally remediated. Instead, an assessment of risk should be undertaken to determine whether the existing seals should be remediated to insure effective operation. Any such risk assessment should be based on location of the seals, their proximity to active work areas, the nature of the gas concentrations inby the seals, and the overall condition of the seals. The West Virginia legislature recognizing this concern passed SB-68 this past March, authorizing the Director of the Office of Miners' Health, Safety and Training to require additional inspections and sampling where remediation may be unsafe. To the extent that an existing seal must be remediated, how do we deal with the 10 foot minimum requirement for seal location in the coal pillar? We believe that a degree of flexibility and discretion is required when making these adjustments to remediate existing**

**seals. We are also uncertain from the ETS how MSHA anticipates monitoring for methane and oxygen concentrations of sealed areas prior to May 22, 2007. If the existing sampling pipe(s) are not functioning properly, is the installation of a new pipe expected? If only one pipe is in place, does the new standard anticipate the installation of a second pipe? In our judgment, the drilling of holes from the surface into the mine for monitoring is not a safe or advisable practice.**

### **New Seals**

**It has come to our attention that MSHA is requiring a safety factor of two for seal design. We question the basis for such a high safety factor and whether it is truly practical and necessary in all circumstances. Rather than increasing seal design requirements with arbitrary and/or unspecified safety factors embedded in the design and approval process, we request that full details of the design be made clear to**

**designers up front, without a safety factor expression. This will reduce confusion for all involved. Furthermore, it is important for MSHA to consider the practicality and reasonableness of seal design, including recognition of the types of materials that are readily available in mines for the purposes of seal design and construction. To set standards that are out of touch with the reality of mining operations will only frustrate the ability of mine operators (particularly small operators) to comply with the ETS.**

**With respect to monitoring, we question the value of a second sampling pipe in each seal as set forth in section 75.335(d).**

**MSHA states that it has included this new provision in the ETS “so that the operator can obtain a more representative sample of the sealed area.” We question whether this is truly the case.**

**What is the basis for MSHA’s belief that a second pipe will provide a representative sample of the entire sealed area or that the benefits would outweigh the risks? We question**

**whether the risk of requiring multiple metallic conductors through every mine seal is wise, from a safety standpoint, or necessary, from an operational perspective.**

**In its 120 psi reinforced concrete seal approval document, MSHA states that a typical time period for the curing of new seals is 28 days. MSHA states in its preamble that the baseline sampling period for gas concentrations could extend for a period of 14 days or until such time as the atmosphere in the sealed area is inert or the trend reaches equilibrium. What happens if, during or after this time period, the atmosphere is not inert? Rather than engage in such an extensive sampling process (which may be difficult to oversee) and the need for inerting, is there the potential for an alternative approach? One suggestion may be to designate certain sections of the mine as high risk zones (or safety zones) that would have limited access or may require other safeguards during the time that the atmosphere is not inert.**



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**With regard to the height of seals, MSHA has set various upper limits in its mine seal design and approval document. In some mines the entries are well over 7 or 8 feet high. How does MSHA anticipate addressing this situation? We anticipate that MSHA's reference to entry dimensions at section 75.336, without limitation, would allow the states to address this situation.**

**With respect to how we may appropriately address pressure in excess of 120 psi (for example, due to anticipated pressure piling), we suggest that still-larger seals may not be the best answer. The handling of excessive pressures can, we believe, be accomplished with existing technologies and innovative designs that incorporate blast wave mitigation techniques such as weak-wall structures or entry geometry modifications in the region just in by the seal. We believe it is important to explore**

**and develop concepts such as those incorporating stacked or hanging rock dust bags and/or water-filled plastic tanks to provide blast-wave disruption and flame quenching in the region just inby the seal. These measures and techniques, we feel, will serve to reduce the force and the extensiveness of an explosion before it encounters the mine seal. We believe that these types of mitigative approaches are realistic and can serve to address many of MSHA's concerns, including the uncertainty associated with addressing explosion pressures by seals alone. We request that specific language be included to allow the development and use of such alternative methods as an option for dealing with explosion pressures.**

**With regard to inerting, we question whether this option is always feasible, given existing technologies and the availability of inerting equipment in the U.S. Also, inerting may create a false sense of security that there are no explosive mixtures behind a set of mine seals. We know that this is not always the**

**case. In certain instances, avoiding areas near older seals altogether, as an alternative to inerting, may be the safest, best solution. Establishing safety zones around certain seals, as an alternative to inerting, should also be considered.**

### **Certification Process**

**At section 75.336(b)(2), MSHA requires that a professional engineer (PE) be designated to conduct or have oversight of seal installation and certify that the provisions of the approved seal design have been addressed. What does this require?**

**Must the PE be on site and monitor the construction of the seal on an hourly or daily basis? With regard to the certified person in section 75.337(b), does a similar requirement apply?**

**Must this person be at the seal construction site on a 24/7 basis? When a PE is incorporating a seal design that has been approved by MSHA, must the PE re-certify the design of the seal itself or only that it is installed properly?**

**We appreciate the opportunity to submit this statement today. While MSHA has made significant strides in addressing the topic of mine seals, we believe that additional work is needed, particularly with regard to the practical application of the rule and the implications of the rule for mine operators and state regulatory authorities. Additionally, while we recognize that” one size does not fit all” regarding implementation of rules that apply nationwide, it is important for MSHA to provide a mechanism for resolution of difference among the various MSHA districts regarding rule interpretation and application. We would welcome an opportunity to work in partnership with MSHA to address the above comments and adjust the rule accordingly. I would be happy to answer any questions that you may have.**