

## Comments on MSHA's Emergency Temporary Standard on Sealing of Abandoned Areas

Kentucky Coal Association  
July 12, 2007

- **Basic Kentucky coal facts and Industry trends.**

### **Kentucky Production**

- 124 million tons in 2005.
- 80% mined in Eastern Kentucky  
(57% underground, 43% surface)
- 20% mined in Western Kentucky  
(83% underground, 17% surface).
- Production peaked in 1990 at 179.4 million.
- Kentucky ranks third nationally behind Wyoming (450 million) and West Virginia (150 million).

### **Miners**

- 17,190 miners. Down from 48,000 miners in 1981.
- Multiplier or trickle down of over 50,000 jobs statewide (utilities, equipment vendors, repairmen, engineers, truckers, accountants, etc.)
- Kentucky miners earn \$47,000 per year.
- 3% of working miners are members of UMWA.

### **Exports---Use**

- Kentucky exports 73% of its coal, bringing over \$3.5 billion into Kentucky. Around 85 cents on each dollar stays here – wages, benefits, operating expenses, royalties, and taxes.
- 68% to electric power plants; 31% to industrial users.
- 73% was sold to 23 states and 4 foreign countries

### **Economics**

- 73% was sold out-of-state, bringing over \$3.5 billion into Kentucky.
- Coal paid \$230.6 million in severance taxes in 2006 in addition to the normal business taxes paid by all Kentucky companies.

**Reserves** --- 88 billion tons -- enough for well over 200 years at current production  
West Kentucky 36 billion tons  
East Kentucky 52 billion tons

### **Nation's supply of electricity:**

- Coal 52%
- Nuclear 20%
- Natural gas 16%
- Hydropower 7%
- Oil 3%

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- Renewables 2% (wind, solar, biomass and geothermal)
- In Kentucky coal supplies 91% of our electricity. We have one of the lowest electrical rates in the nation because of coal.
- Coal miners are American heroes. I couldn't be more proud of our coal industry.

### **Kentucky and U.S. production trends**

#### Year to date:

Kentucky's production is down 6.4%

Production east of the Mississippi is down 2.8%.

Why? Several reasons:

- a drop in coal prices paid by utilities,
- implementation of new state and federal safety laws,
- general expense increases (e.g., steel, fuel, explosives, benefits) and,
- trends toward surface mining. Surface production is generally cheaper and safer than underground coal production. This is especially true in Wyoming where you have 50-60 foot seams of coal.

Forecast. You will see the continued decline in production east of the Mississippi, especially in the Appalachian region. Production costs for underground mines continue to escalate.

The small operator quickly is becoming a thing of the past. Like Wal-Mart and McDonald's, the coal industry is rapidly becoming dominated by large, multi-state corporations.

And what many people fail to realize is the corporate philosophy to obey the laws. It's easy to say the coal industry is an outlaw industry, but these statements are so untrue and misleading.

- **The coal industry has a very positive safety record---something we've lost sight of.**

Nationally, we have witnessed a steady downward trend in both fatalities and injuries over the past 30 years---this is fact, not emotion. We've had good years and bad years, but the trend is clearly a downward trend. We are making a very positive progress. And the thanks go to the state and federal safety agencies, the company safety philosophies, and the quality of our workforce.

Injuries. Did you know that the Kentucky coal miner is safer from injuries than the average Kentucky worker? And yet, if you listen to the news press you would think just the opposite.

Fatalities. In Kentucky during a three year period from 2002 to 2005, the following Kentucky categories had average annual fatalities as follows:

Service Providing	52.0
Trade, Transportation and Utilities	36.3
Agriculture, Forestry, Fishing and Hunting	26.0
Transportation and Warehousing	25.7
Construction	20.7
Government	14.3
State and Local Government	12.3
Manufacturing	11.7
Coal Mining	8.3
Retail Trade	7.7
Professional and Business Services	4.0

Coal mining fatalities are much fewer than other industries, but because of press coverage, every coal death is front page news while a construction fatality is buried in the second section.

Here's an interesting fact. Did you know that 750 people die each year in the U.S. from eating bad or ruined potato salad? Do you think we could get some new laws put on the books to control these deaths?

There are numerous other examples like this. The point is, regardless of the reason why---coal clearly has been singled out by the news press. So have the hardworking people at MSHA. MSHA inspectors are honest, hard working individuals dedicated to safety. It's frustrating to read otherwise in the papers.

Like all of us here this morning, our goal is zero fatalities. We all have this common goal. How to reach this goal is what we sometimes disagree over.

We think the key to taking safety to the next level is with behavior modification. Behavior modification is the key to insuring miners know and want to do their work in a safe manner.

Behavior modification is teaching the miners why it is important to work safely, not just for themselves, but for their employer and more importantly, for their families.

To affect behavior modification takes time, commitment, and money. Too much emphasis is being placed on enforcement while behavior modification is being ignored. While enforcement is critical, an equal emphasis should be placed on behavior modification. We strongly encourage MSHA to focus more on this aspect of mine safety.

- **We support safety improvements, but need rational safety requirements.**

In the rush to get this emergency standard published, many questions were left unanswered. There have been many hardships, many questions where different answers

are given in each MSHA District Office. We need rational safety requirements. MSHA still doesn't have the answers to so many questions on seal construction. In this emotional rush, we are over-designing and needlessly wasting efforts.

- **We question MSHA's urgency and inflexibility with this Emergency Temporary Standard.**

MSHA has set a basis with the Emergency Temporary Standard from which they will be unable to back down from---even based on the engineering and technological comments they may receive.

Why an ETS? What made a "grave danger" 16 months after Sago and with the July 2006 PIB in place with much the same requirements? We should have issued a proposed regulation with a quick comment period to eliminate mistakes.

It is imperative that we take politics and emotion out of this process.

- **We are frustrated with the inability to comment on many of the assumptions used by MSHA in seal design.**

Based on the PowerPoint presentations by MSHA, how can Tech Support require a 2 to 1 safety in the seal design with it not being required in the PIB or the ETS? All requirements, assumptions, inputs, etc. used by Tech Support to evaluate seal designs should be publicized for review and comment.

- **We oppose replacement of existing seals.**

MSHA solicited comment in the preamble on the feasibility of requiring existing seals be removed and replaced. The final rule should not require the replacement of existing seals due to several reasons:

- It can be dangerous to replace seals. It increases the chance of getting someone hurt or killed.
- Many times there isn't sufficient space for a second seal.
- In many cases, there is only a walking path to get to seals, making it difficult to get materials to the seal area.
- You cannot do a "one size fits all".
- The cost of such replacement is a factor.

The seals are currently required to be monitored and the atmosphere behind the seals to be inert as required by the ETS. Strengthening existing seals could be accomplished if a simple, cost-effective product were available. We understand the testing has been done on a substance but the results have not been released.

- **We oppose having a professional engineer certify as-built seals.**

The requirement that the professional engineer must be knowledgeable in structural engineering will cause problems. MSHA's interpretation of this proposal is that the engineer must be a structural engineer.

Engineers, like attorneys and physicians, are licensed to practice their profession, but their profession does not recognize certain practice areas. In other words, once one receives his professional license (physician, attorney, engineer), he can practice in any area. Professional ethics require him to ensure his own competency in the area he intends to practice.

Further, "structural" engineers may not be competent in mining engineering. There are many areas of underground mining where a "structural" engineer would not be competent to practice. So requiring the engineer to be a "structural" engineer is improper. The words "knowledgeable in structural engineering" should be deleted.

We also have concerns over the requirement for the engineer to have oversight of seal installation.

- This would be difficult, expensive and is not necessary.
- There are many unknowns in the construction of seals, e.g., the concrete mix shipped to the mine and the other materials used. There are so many factors completely beyond the engineer's control
- The term "oversight" itself is vague?
- You have double certification since MSHA is requiring someone from the company to certify construction.

It is obvious that MSHA just wants someone to blame if something goes wrong. But in reality, this will prove difficult. Most serious or fatal accidents are a result of a series of mistakes or wrong actions. Having a pre-defined scapegoat is onerous at best. Finding a mine foreman is becoming increasingly difficult. Who wants this responsibility? It will be hard to find someone willing to certify seals when this liability will stay with this person many years into the future---long after he's left the company.

- **We support the use of Mitchell Barrett seals and other pre-designed seals developed by MSHA.**

We join with others in pushing MSHA to allow the Mitchell-Barrett seals for the 50 psi standard. The cost of installing the new approved seals will put a lot of smaller operators out of business and will force some to avoid sealing altogether, which will increase exposure to workers, supervisors, and inspectors in traveling extensive abandoned works that are not sealed.

**This concludes my oral remarks. Our technical comments will be submitted at a later date.**

## Kentucky Mining Fatalities

Miners become safer from illness, injury, and death as improved safety technologies are developed and adapted by the mining industry. From 1920-29, 1,614 Kentucky miners were killed on the job. During 1990-99, 116 mining fatalities were recorded. (In 1997, 1999, 2001, and 2005 Kentucky mines experienced their lowest number of fatalities—5.)

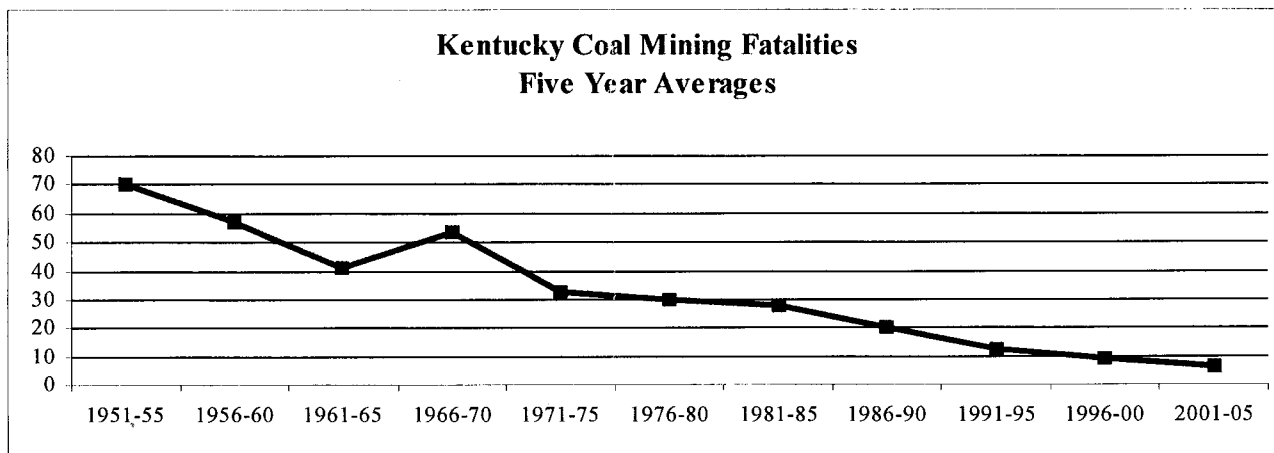
Other sectors may employ more people, but it is still important to note the number of fatalities each year is lower in coal mines than at many other Kentucky workplaces. (See the table at right.)

KENTUCKY CATEGORY	2003-2005 Average fatalities per year *
Service Providing	52.0
Trade, Transportation and Utilities	36.3
Agriculture, Forestry, Fishing and Hunting	26.0
Transportation and Warehousing	25.7
Construction	20.7
Government	14.3
State and Local Government	12.3
Manufacturing	11.7
<b>Coal Mining</b>	<b>8.5</b>
Retail Trade	7.7
Professional and Business Services	4.0

\*Fatalities as reported by Kentucky Department of Labor at [www.labor.ky.gov/osh/educationtraining/ethead4.htm](http://www.labor.ky.gov/osh/educationtraining/ethead4.htm).

# COAL COUNTS

## Safety is First in Kentucky Mines



\*Statistics from the Kentucky Office of Mine Safety and Licensing (formerly the Kentucky Department of Mines and Minerals).



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## How safe are Kentucky's mines?

### The Kentucky coal miner is safer from injuries than the average Kentucky worker!

Kentucky coal miners typically experience fewer work-related injuries and illness than many other Kentucky workers. The U.S. Department of Labor annually compiles work-related injury and illness statistics\*, expressed as an incidence rate (the number of injuries/illnesses per 100 workers). Between 2003-2005, the average annual incidence rate for Kentucky miners was 6.1. The average annual incidence rate for all Kentucky workers during the same period was 6.2. Employees in the following categories experienced more injuries and illness in an average year than did Kentucky's coal miners: health care & social assistance, agriculture/forestry/fishing/hunting, manufacturing, construction, transportation/warehousing, and private industry. (See the table to the right.)

Comparing the injury rate for the 1996-2002 time period (8.21) to this latest average (6.1) shows a 26% decrease. Coal mining safety continues to improve.

\*Incidence statistics can be found at [www.bls.gov/iif/oshstate.htm#KY](http://www.bls.gov/iif/oshstate.htm#KY).

## What's the next step to safer mines?

The number of fatalities and injuries in Kentucky's coal mines continues to decline. However, the industry has yet to reach the goal of "zero fatalities." Behavior modification is the key to insuring miners know and want to do their work in a safe manner.

To affect behavior modification takes time, commitment, and money. The federal Mine Safety and Health Administration is charged with the primary responsibility of enforcing safety laws in coal mines. Kentucky recently adopted its own enforcement laws, duplicating the federal effort. Can't our valuable resources be better used to improve miners' safety? We think yes.

### Kentucky Mine Safety and Health, 1990-2005\*

Category	1990	1995	2000	2002	2004	2005
No. of Mines	1,769	1,197	605	648	608	594
No. of Miners	41,761	30,805	17,150	16,851	16,667	17,190
Tons Produced (mm)	179.37	157.79	131.8	131.4	119.0	124.4
Fatalities	20	11	12	7	5	5

\*Statistics from the Annual Report of the Kentucky Office of Mine Safety and Licensing (formerly the Kentucky Department of Mines and Minerals). See <http://www.oms.ky.gov/safetyandlicense/annualreports/>.

KENTUCKY CATEGORY	2003-2005 Average Annual Injury and Illness Rate *
Health Care & Social Assistance	10.4
Agriculture, Forestry, Fishing, Hunting	9.6
Manufacturing	8.9
Construction	6.9
Transportation and Warehousing	6.3
Private Industry	6.2
<b>Coal Mining</b>	<b>6.1</b>
State and Local Government	5.9
Wholesale Trade	5.8
Retail Trade	5.7

\*The most current years for which comparable data is available from the U.S. Department of Labor.

Kentucky mine safety authorities' primary role should be miner training and education, although inspectors should retain the power to close an unsafe mine. Writing a citation which duplicates one written by a federal agency doesn't make the mine a safer workplace. But, activities to observe the miner and correct unsafe work habits can lead to safer mines. As teachers, rather than policemen, state inspectors could improve safety. They can teach the importance of working safely to avoid injuries which impact not just the miner, but his family and employer as well. By placing emphasis on training and education instead of duplicating federal roles, the state's safety agency can help achieve the goal of "zero fatalities."