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MSHA
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, VA 22209-3939

Re: RIN 1219-AB52, Sealing of Abandoned Areas

Thank you for the opportunity to submit these comments regarding the above-styled rulemaking for sealing of abandoned areas. We submit these comments as an addendum to our earlier-submitted comments of September 17, 2007.

The thrust of our earlier comments is that MSHA's regulations for mine seals have long been illegal because the regulations have not ensured that such seals are explosion proof. Shortcomings in the Emergency Temporary Standard (ETS) which is the subject of this public comment period – such as MSHA's refusal to require monitoring behind all seals and the agency's wholesale refusal to require remediation of existing seals – demonstrate that MSHA's regulation of mine seals still is fraught with problems. However, if there was any doubt about whether MSHA's rulemaking here is flawed, the recent revelation the Army Corps of Engineers report analyzing the Sago Mine explosion[1] removes all doubt.

Especially galling is that when MSHA published its ETS in the Federal Register, MSHA assured the public that "MSHA has no empirical or other data at this time demonstrating that mine conditions exist that will necessitate seals stronger than 120 psi."[2] However, we understand that the Corps of Engineers report was completed *two weeks* before MSHA's Federal Register notice on May 22! The Corps of Engineers report, as the public now knows, estimates that the explosive forces of the Sago Mine blast may have been upwards of 629 psi. However, in its ETS, developed in response to the Sago and Kentucky Darby disasters, MSHA generally requires seals to withstand explosive forces of only 50 or 120 psi, depending on an operator's monitoring of the atmosphere in a sealed area. Moreover, the public did not learn of the Corps of Engineers report because MSHA released it of its own volition, but rather

[1] McMahon, G.W., "CFD Study and Structural Analysis of the Sago Mine Accident," Geotechnical and Structures Laboratory, Engineer Research and Development Center, U.S. Army Corps of Engineers. May 2007.

[2] 72 FR 28796, 28801 (May 22, 2007).

because of dogged investigative reporting by *The Charleston Gazette*.[3] Thus, MSHA's standards as proposed in the ETS are suspect, to say the least.

As we noted in our earlier comments, Congress long has mandated that seals of abandoned areas be capable of withstanding an explosion:

> In the case of mines opened on or after the operative date of this title, or in the case of working sections opened on or after such date in mines opened prior to such date, the mining system shall be designed in accordance with a plan and revisions thereof approved by the Secretary and adopted by such operator so that, as each working section of the mine is abandoned, it can be isolated from the active workings of the mine with explosion-proof seals or bulkheads.[4]

MSHA indicates in a December 7, 2007 memorandum accompanying the Corps of Engineers study that it gives the study little weight, if any, because the mine conditions which the study replicated are "worst-case" scenarios. However, a worst-case scenario is precisely what MSHA should be considering in promulgating such critical regulations, if MSHA is to assure that seals are to be explosion-proof. Just because an atmospheric condition behind a seal may be uncommon does not mean that MSHA is excused in accounting for such an atmosphere in promulgating its regulations here. In other words, the Corps of Engineers may not be able to know with confidence that it replicated the atmosphere that led to the Sago disaster. However, the Corps of Engineers study illustrates some frightening possibilities for which MSHA must account if MSHA's regulation is to assure that seals are explosion-proof.

As an aside, MSHA's memorandum accompanying the Corps of Engineers study points to variations in the atmospheres of sealed areas as a reason to discount the Corps of Engineers study's reliance on a uniform methane distribution in the sealed area. Ironically, the variability of atmospheres in sealed areas is a concern that we and other commenters made earlier in the public comment period and for which MSHA's ETS does not account. The point here is that in large sealed areas, the atmospheres can be quite varied. The ETS's atmospheric sampling protocol, however, would not result in thorough sampling and detection sealed areas that are enormous in size. The ETS requires sampling only through two tubes at the seals themselves: one which would extend only 15 feet into the sealed area, and one which would extend only as far as the center of the first connecting crosscut inby the seal, as required at 30 CFR § 75.335(d). This is inadequate, and MSHA's memorandum accompanying the Corps study is an admission of such. Therefore, in its final rule, we expect MSHA to require more thorough testing, such as monitoring through boreholes, than what MSHA requires in the ETS.

Nevertheless, the existence of varied atmospheres in sealed areas is no excuse for MSHA to discount the possibility of a worst-case scenario in which an atmosphere has a most dangerous concentration of explosive gases. The bottom line here is that MSHA needs to go back to the drawing board if it is to

[3] Indeed, according to these media reports, not even the Assistant Secretary for Mine Safety and Health knew the Corps of Engineers report to have been finalized, raising a host of other concerns about the agency's abilities in promulgating this regulation specifically and carrying out its weighty charge of protecting the nation's miners generally.

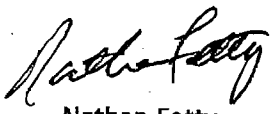
[4] 30 U.S.C. § 863(z)(2) (emphasis added).

promulgate a properly-protective regulation that accounts for the possibility of these much greater explosive forces. In its memo accompanying the Corps of Engineers study, MSHA itself indicates as much in stating that it wishes to collect more data.

However, MSHA has sat on its hands long enough. *Two years* after the Sago disaster, miners across the coalfields are subjected daily to intolerable working conditions as they labor in mines with potentially inadequate seals. MSHA must *immediately* provide the nation's miners with a properly protective seals regulation and start enforcing that regulation.

Thank you again for your consideration of these comments and we look forward to MSHA's promulgation of a final rule that fully complies with Congress's mandate that seals be explosion-proof.

Sincerely,



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