
From:
Sent: Thursday, January 02, 2003 7:44 AM
To:
co:
Subject: **FW: Testing & Evaluation by Independent Laboratories**

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Comments 10-17-02
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Comments on the Ind Lab rule

-----Original Message-----

From: Weeks, Jim [mailto:jweeks@atlintl.com]
Sent: Tuesday, December 31, 2002 03:33 PM
To: comments@msha.gov
Cc: safety8umwa.org
Subject: Testing & Evaluation by Independent Laboratories

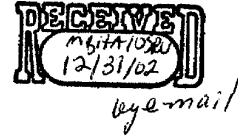
Dear Mr. Nichols:

I have attached the comments of the **UMWA** on the proposed rule on Testing and Evaluation by Independent Laboratories published in 67 FR 64196 (October 17, 2002). A printed version follows.
Best wishes for the new year.

JimWeeks

James L. Weeks, ScD, CIH
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<<Comments 10-17-02 PR.doc>>

AA87-Comm-2



December 31, 2002

Marvin W. Nichols, Jr. Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Blvd., Room 2352
Arlington, VA 22209-3939

Re: Testing and Evaluation by Independent Laboratories
67 Fed Reg 64196-213, October 17, 2002

by e-mail: comments@msha.gov
Printed version to follow by U.S. Mail

Dear Mr. Nichols:

These are the comments of the International Union, United Mine Workers of America on the above-captioned notice. We appreciate the opportunity to express our views but due to limited resources, have not been able to develop detailed comments on this proposed rule.

We have **two principal** concerns with this rule. The first concerns the competence of those laboratories that would perform the testing and evaluation of machines and instruments that would be used in mines. The Mine Safety and Health Administration and the former Bureau of Mines have, over nearly a century, developed a knowledge of mining and appropriate and pertinent expertise in evaluating mining products that is unmatched in any institution in the United States and probably throughout the world. We **believe** it is **risky** to reduce the contribution of this body of expertise and to delegate their functions to third parties. Independent laboratories may have appropriate expertise to evaluate mining products in relation to MSHA regulations but we question how many of them know, from first **hand** experience, from investigating mining disasters, the many nuances of what makes for a safe product. There is a difference between a chef and a cook; one understands food, the other merely follows a formula. Why use a cook when we have a chef?

It is not only a question of MSHA's expertise and institutional memory that is at stake in evaluating specific mining products. By reducing MSHA's role in evaluating products, we run the **risk** of institutional atrophy.

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Our second concern is with conflict of interest. To draw an analogy with recent events in the financial sector of our society, we have recently seen the troubles that can occur when an accountant's task as an auditor is compromised by also serving as a consultant. Conflicts of interest are serious matters. A laboratory hired by a manufacturer would want to keep that manufacturer as a customer and consequently could be influenced to gloss over negative aspects of a mining product. We are not suggesting overt corruption but only to recognize that such factors influence people's judgment. The **MSHA** laboratory does not have that problem. The **MSHA** laboratory **exists to serve the entire public, not only the manufacturers of mining products.**

We recognize that in this proposed rule, unlike its predecessor in 1994, **MSHA** would retain its capabilities and would offer manufacturers the alternative of having products evaluated by an independent laboratory or by **MSHA** and that **MSHA** would still have the final say by evaluating the evaluation. This is not sufficient. **MSHA** should retain its current function because only the **MSHA** laboratory can operate relatively unfettered in the public interest.

We look forward to the public hearings on this proposed rule and reserve the right to either make additional comments at these hearings and to submit additional comments after the hearings.

Sincerely,

James L. Weeks, ScD, CIH
Consultant to the **UMWA**

c: Joe Main