



The Pittsburg & Midway Coal Mining Co.

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Mr. Marvin W. Nichols, Jr.
Director, Office of Standards, Regulations and Variances
Mine Safety & Health Administration
1100 Wilson Boulevard, Rm 2313
Arlington VA 22209-3939

Re: Comments on Proposed Regulations
Emergency Evacuations; Emergency Temporary Standards
30 CFR Parts 48 and 75

Dear Mr. Nichols:

These comments are respectfully submitted by The Pittsburg & Midway Coal Mining Co. concerning the Emergency Evacuations, Emergency Temporary Standards that appeared in the Federal Register on Dec. 12, 2002 (67 FR No. 239).

Regulation:

Sec. 75.1501 (a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundations.

Comment: The definition of “responsible person” (RP) needs clarification. In particular this definition needs to be clarified as to how it relates to the “responsible person” required under existing regulation Section 75.311(1) (c) and again under existing regulation 75.1600. Since the same title/designation is used, confusion can be expected as to the required training and experience levels required for each.

Regulation:

Sec 75.1501 (b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which represents an imminent danger to miners due to fire, explosion, or gas or water inundation.

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Comment: MSHA asserts in the Section-by-Section Discussion part of the Preamble (67 FR 76657 *et seq.*) that the interpretation of “imminent danger” in Section 3 (j) of the Mine Act is “well known and provides readily understandable criteria for the responsible person to decide to initiate a mine evacuation.” On the contrary, the issue is fact specific and the concept is abstract. The exact nature of what does or does not constitute an imminent danger has been the subject of discussion or litigation since it was first put forth. As pointed out in the Section-by-Section Discussion, not every mine fire explosion, gas or water inundation hazard “may result in a mine emergency.” The responsible person would have to make a quick judgment on imperfect information in a stressful situation. We propose that in enforcing the regulation MSHA defer to the responsible person’s good faith, reasonable judgment, as the Review Commission does to inspectors issuing closure orders under Section 107(a) of the Act.

Regulation:

Section 75.1501(d). Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

Comments: At first glance this seems to be a clear and easily understood paragraph. It appears to address those situations in which someone other than the responsible person has information that requires giving an immediate warning of an imminent danger that warrants evacuation. This could occur for example, when the responsible person is not immediately available. MSHA, however, in its Compliance Assistance Guide gives the following troubling explanation of Section 75.1501(d):

“This paragraph provides that the ability of any person to warn of an imminent danger which warrants an evacuation of the mine is not restricted. Miners do not need to wait for concurrence or approval from the RP to evacuate the mine after receiving a warning”.

Section 75.1501, on the one hand, requires the responsible person to “take charge” in the event of a mine emergency involving a fire, explosion, or gas or water explosion and, on the other hand, at least in the Q&A, authorizes an “every man for himself” evacuation mentality over which the RP has no control.

Existing evacuation procedures in the mining industry rely heavily upon an efficient, orderly, and controlled mine evacuation during a mine emergency. Hallmarks of proper evacuation include assembly at designated locations, accounting for all miners in the area, and evacuation through the appropriate routes. The appropriate route is determined on the basis of available information pertaining to the emergency. Especially in a fire situation selecting the correct escape route is of critical importance. A very good example of this is a video “Escape From a Mine Fire,” which is provided by the MSHA Academy and has been widely used for underground miner training. This film documents testimony from an actual mine fire situation in which the decisions by

Marvin Nichols

3/3/2003

Page 3

one or two informed personnel in a group of miners resulted in the group safely reaching the surface after normal escape routes were blocked by a mine fire. Had the group not stayed together and retreated as a unit, lives would almost certainly have been lost. Another example is the Quecreek mine inundation, in which the section supervisor maintained leadership even to the point of directing the crew to return to the section after encountering the rising water levels on the way out of the mine.

The importance of ensuring an informed and orderly evacuation is emphasized by MSHA in the first paragraph of the Section – by- Section Discussion, which states the following:

“The purpose of these requirements is to ensure that during mine emergencies, an **informed decision** is made by **one responsible person** regarding responses to mine emergencies and that mine evacuations be conducted **rapidly, efficiently and safely**” (emphasis added).

Determining whether there is an imminent danger can be a difficult judgment. Deciding the best way to handle it can be much more difficult, even for the person with the most complete information. Allowing each individual miner to make that determination on his own and on limited information can be very dangerous and could seriously interfere with efforts to control a fire situation or arrange rescue of injured personnel. Retreating miners, especially in a track mine, could hinder the responsible person’s efforts to direct emergency supplies or transportation to the site of the mine emergency. Also, the persons needed by the responsible person to address the emergency could decide on their own to retreat out of the mine without notifying him.

Certainly every miner has the right to warn others of an emergency. However, for their own individual safety and that of their fellow workers, miners must follow the mine’s emergency response plan. MSHA should allow mining operations the flexibility to develop emergency response plans specific to their own conditions, which should address under what circumstances and how miners should evacuate, including when they should initiate it on their own.

Thank you for the opportunity to submit these comments. We support MSHA’s efforts in this critical matter and hope that our comments are of assistance.

Sincerely

A handwritten signature in black ink that reads "David M. Arnolds". The signature is written in a cursive style with a large, prominent initial "D".

David M. Arnolds