



September 8, 2008

Patricia W. Silvey
Director, Office of Standards, Regulations & Variances
U.S. Department of Labor
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, VA 22209-3939

Re: Comments of the National Mining Association on MSHA's Proposed Rules
On the Utilization of Belt Air and the Composition and Fire Retardant
Properties of Belt Materials in Underground Coal Mining (73 Fed. Reg.
35,026; RIN 1219-AB59)

Dear Ms. Silvey:

Set forth below are the comments of the National Mining Association (NMA) on the Mine Safety and Health Administration's (MSHA) Notice of Proposed Rulemaking (NPR) amending 30 C.F.R. Parts 6, 14, 18, 48, and 75, published in the Federal Register for June 19, 2008.

Introduction

At the outset let us express our appreciation for having the opportunity to comment on this important rulemaking intended to implement the recommendations in the report of the Technical Study Panel (TSP) on the Utilization of Belt Air. The TSP was established by section 11 of the Mine Improvement and New Emergency Response (MINER) Act of 2006, legislation strongly endorsed by NMA.

The TSP report and its 20 recommendations, all of which were adopted unanimously, recognize as did earlier technical reviews¹ that air coursed through the belt entry of an underground coal mine can be used safely to ventilate the working face provided certain key precautions are employed. Viewed from this

¹ Belt Entry Ventilation Review: Report of Findings and Recommendations, U.S. Department of Labor, Mine Safety and Health Administration (1989); Final Report of the Department of Labor's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Areas of Underground Coal Mines and Related Provisions (Nov. 1992).

perspective, TSP's recommendations are an important adjunct to the prior research efforts and to MSHA's April 2004 final belt air rule²; and their promulgation, with adoption of our comments, will assure the safety of miners working in sections ventilated by air coursed through the belt entry by requiring those mines to attain "a higher standard"³ of protection. This fundamental protective principal has guided MSHA's management of the industry's use of belt air for ventilation since passage of the Federal Mine Safety and Health Act⁴ and, as a result, no miner fatality is directly attributable to the use of this critically accepted ventilation practice.

Even the tragic events at the Aracoma Alma Mine on January 19, 2006, which gave rise to Section 11 of the MINER Act, when viewed critically, reinforce the positive benefits that can be derived from this ventilation practice. Indeed, MSHA's comments to TSP reaffirm the recognition that belt entry ventilation is safe. Thus a senior MSHA ventilation expert testified to TSP:

We believe that full compliance with the belt air rule would have prevented these two fatalities, there is no doubt in my mind.

Transcript of TSP Public Hearing, May 16, 2007, statement of William J. Francart at 112.

With the above background in mind, NMA generally supports this NPR. As you will see below, the majority of our specific comments are on the portion of the NPR that would amend 30 C.F.R Part 75. We do, however, wish to call your attention to §14.11(d) of new 30 C.F.R. Part 14, "Requirements for the Approval of Flame-Resistant Conveyor Belts." (73 Fed. Reg. 35,052) That provision specifies:

If a conveyor belt poses an *imminent danger or hazard* to the safety or health of miners, an *approval may be immediately suspended...* The suspension may *continue until...revocation proceedings are completed.*

(Emphasis added.)

By way of explanation of the ramifications of this proposed requirement, the preamble of the NPR explains that:

[c]onsistent with MSHA's practice, once an approval is suspended,

² 69 Fed. Reg. 17,480 (April 2, 2004).

³ TSP Report at 6.

⁴ Prior to promulgation of the final belt air regulations in April 2004, mine operators seeking permission to ventilate using this practice were required to seek approval to do so by filing a Petition for Modification under section 101(c) of the Federal Mine Safety and Health Act of 1977. In approving a Petition the Secretary was required to "determine that an alternative method of achieving the result of [the] standard [prohibiting the use of belt air for ventilation] exists which will at all times guarantee no less than the same measure of protection afforded the miners ... by such standard"

MSHA would notify the public ... [and] [a]ll affected products must be removed immediately from underground coal mines, and MSHA would initiate enforcement action for failure to do so.

Id. 35,031-30,532.

NMA appreciates the need for such a provision and understands that, as the preamble explains, it is derived from similar regulations in 30 C.F.R. Parts 7, 15, and 18. *Id.* 35,031. However, those existing provisions deal with discrete products (*e.g.*, battery assemblies, explosives, electrical machine components), the removal of which, if required, would pose difficult but manageable operational hurdles. In the case of conveyor belts, however, the sheer volume of material far surpasses these discrete products and we caution that demanding their immediate removal could result in unintended safety consequences. Mandating "immediate removal" of literally hundreds of miles of conveyor belt materials from the nation's underground coal mines would pose enormous concern as to how to accomplish that safely; and the NPR demonstrates no evidence that MSHA has even considered the problem.

Furthermore, while the term "imminent danger" is a well understood term of mine safety law, NMA is concerned that MSHA has a different and broader standard in mind by use of the phrase "imminent danger or *hazard*," in the proposed requirement.

NMA therefore recommends that MSHA reconsider this proposed provision. As one alternative, it would be useful, in our view, to develop an expedited procedure to validate any concerns identified and to establish a manageable approach to expeditious remedy of such concerns. In addition, at a minimum, there is ample agency precedent to support the development of a procedure to provide authority to MSHA district managers to approve approaches alternative to "immediate removal." Such approaches could establish agreed upon safety precautions permitting miners to remain at work during a removal/replacement cycle.

In addition to the above comment on §14.11(d), following below are our specific comments of those portions of the proposed revisions to 30 C.F.R. Part 75 that we believe either: (1) needlessly introduce new requirements that will not further enhance miner safety or health in belt air applications; (2) are duplicative or contrary to existing requirements; (3) may adversely impact the safety of miners working at mines where belt entry ventilation is currently employed; or (4) seek to regulate matters far beyond the stated purpose of this rulemaking.

Specific Comments on Proposed Revisions to Part 75

§75.323 Actions for excessive methane

In the preamble the agency requests comments on including a requirement in the final rule which would limit methane levels in the belt entry to prevent gas liberated on a conveyor belt or from the belt entry from increasing the methane content on the working section. (73 Fed. Reg. 35,035) MSHA is considering requiring that operators take action when methane is between 0.5 and 1.0 percent.

This proposal is extremely unrealistic and unnecessary because layers of protection are already afforded to miners working on the section through numerous current and redundant regulations. Under these current redundant regulations, miners on the working section have been successfully protected from excessive methane.

For example:

- Section 75.323(b)(1) currently limits methane to below 1.0 percent in intake air courses.
- Section 75.342(a)(1) requires methane monitors to be installed on mining equipment used to extract coal to give a warning at 1.0 percent and automatically de-energize at 1.5 percent.
- Section 75.360 requires that prior to anyone working in an area, a pre-shift examination, including tests for methane, be conducted on roadways and travelways, working sections including working places, approaches to worked out areas, and ventilation controls, high spots along intake air courses where methane is likely to accumulate, and underground electrical installations.
- Section 75.362(a)(1) requires that an on-shift examination, including tests for methane, be conducted once during each shift on working sections.
- Section 75.362(b) requires an examination for hazardous conditions be conducted along each belt conveyor during each shift that coal is produced.
- Section §75.362(d) contains stringent requirements to test for methane at the face (i) at the start of each shift at each working place before equipment is energized, (ii) immediately before equipment is energized, taken into, or operated in a working place; (ii) at 20-minute intervals during operation of equipment in the working face. Machines engaged in the cutting of coal are further equipped with continuous methane monitoring devices that give a warning at 1.0 percent methane and automatically de-energize this equipment at 1.5 percent.
- Additionally, §75.362(f) requires, during each shift that coal is produced, that a certified person test for methane in each return split of air from each working section.

We would also remind the agency that current regulations already limit the methane in intake air courses to below 1.0 percent. Furthermore, prudent

ventilation practice should allow the belt air course to be considered as an additional supply of intake air to the working section. This practice has successfully provided protection to miners on working sections for years.

Reducing the limits of methane in the belt conveyor entries to 0.5 percent provides no measurable increase in protection than what is already required. In light of the numerous existing safety standards regarding methane, this proposal is unrealistic and the perceived benefits do not equate to a measurable increase in safety. We believe that the requirements of maximum allowable limits of methane for intake air courses should also be applied to belt air courses. Such a limitation, combined with strict methane limits already in place for the working section, will provide a successful and proven measure of protection for miners.

In light of these comments, we urge the agency to consider the following:

First, belt air used at the face and the intake air stream both normally travel in adjacent and parallel entries. To decrease the methane content of the belt air stream most easily, the operator would leak additional air from the intake airway into the belt entry. However, at the face, it will make no difference whether the mixing of two airstreams takes place outby the 200-foot measuring point or inby this point. Doing it outby may make the job of the mine foreman more complicated and potentially increase belt air turbulence and dust with the increased airflow.

Second, there is the possibility that, by complicating the ventilation circuit, mine foremen may install regulators in the intake entries to induce air flow into the belt entry. This would serve to reduce the total amount of air that actually reaches the face, resulting in a reduction of safety at the face.

Third, air reaching the face via the belt entry and containing less than one percent methane cannot ever serve to raise the methane at the face above one percent. Furthermore, when faced with high levels (such as sudden outbursts) of methane, mathematically it will always be more dilutive to have more air containing one-percent-or-less methane reach the face.⁵

Sound engineering principles should control.

⁵ Example: Suppose that 20,000 cfm of air containing 0.2 percent methane reaches the section via the intake airway. In addition, 10,000 cfm of belt air, containing 0.8 percent methane, can either join the intake air or be dumped into the return air. The face is generating 1000 cfm of methane. Without the belt air, the total air stream on the exhaust side of the section contains 21,000 cfm, of which 1040 cfm is methane. The methane concentration reaches 5 percent. With the belt air, the total airstream on the exhaust side of the section contains 31,000 cfm, of which 1120 cfm is methane. The methane concentration reaches 3.7%. The same is true of lower methane emission amounts. Using the same intake numbers on a face that emits 200 cfm of methane, the air stream without belt air would have 1.2 percent methane; with belt air it would have 1.1 percent methane. It is only at very low levels of methane emissions that the air stream with belt air becomes the same or greater.

Prohibiting working section ventilation with air that contains 0.5-to-1.0 percent and requiring it to be dumped directly into the return air will thus serve to decrease safety at the face, not increase it.

§75.350(b)(3) Belt air course ventilation

30 CFR § 70.100(b) establishes a ceiling of 1.0 mg/m³ dust concentration in the belt entry. The reduction for quartz is a product of the samples taken in the belt entry (or other intake air course). If the belt designated area sample does not contain quartz in excess of 5 percent there is no scientifically based justification for reducing the intake content of air that does not contain quartz to a level established by a production section level of quartz. For example, the preamble uses a situation where the roof bolter on a section is at a 0.8 mg/m³ standard and therefore the belt entry sample could not exceed that level. The two sampling locations in this example, the roof bolter and the belt entry DA have no logical connection. MSHA should omit this requirement in the final rule.

75.351(q)(2) Atmospheric monitoring systems

In addition to the required annual training outlined in proposed §75.351(q)(1) for AMS operators, proposed §(q)(2) requires that at least once every six months, all AMS operators must travel to all working sections to retain familiarity with underground mining systems including haulage, ventilation, communication and escapeways.

We feel that that this requirement is unnecessary based upon the responsibilities of the AMS operator and would eliminate a number of qualified and experienced persons from operating AMS. Many mines employ former underground miners as AMS operators who are no longer physically capable to travel underground. A requirement to go underground once every six months would potentially eliminate these employees from consideration for this job, even though they bring years of knowledge and experience to the position. The assumed benefit from this requirement, weighed against the loss of experienced miners operating AMS, does not justify the proposed requirement. Additionally, the responsible person already required by MSHA regulations is available to take charge and make critical decisions in addition to the AMS operator.

§75.351(q)(3) Training records

This provision would require training records to be maintained for two years. Other records are maintained for a one-year period, and a one year retention period would permit any necessary verification of AMS operator training. This proposed requirement does not appear to be properly justified.

§75.1103-8(a) Automatic fire sensor and warning device systems; inspection and test requirements

This proposed provision requires that sensor and warning device systems shall be examined at least once each shift when belts are operated as part of a production shift. Based on current and long-standing practice, we assume that MSHA is referring here to a visual examination during a preshift examination; essentially, a reiteration of existing §75.360, et. seq., requirements.

This provision also requires a functional test shall be made every seven days and inspection and maintenance of such systems shall be made by a qualified person. Presently, in accordance with existing regulations and manufacturer's recommendations, CO sensors must be tested and calibrated monthly. It is assumed for the purposes of these comments, that functional testing, although not defined by the proposed rule, will conform to these existing practices and procedures. In addition, increasing functional testing by four-fold will have significant impacts on mine operators on multiple fronts. Therefore, without strong data establishing a clear need for more stringent provisions, the existing requirements should remain unchanged.

§75.1103-8(b) Functional test records

This proposed requirement would provide that a record of the functional test be maintained by the operator for a period of one year. The current regulation requires that records of weekly inspections be maintained at the belt drive location. It is not specific as to where the records of proposed functional tests are to be located and maintained.

§75.1108 Approved conveyor belts

While we support the language of the proposed regulation that will permit operators to purchase conveyor belts approved under Part 18 (the 2G belt) for a period of one year following publication of the final rule, we strongly encourage the agency to solicit from belt manufacturers a detailed estimate of their manufacturing capabilities. We remain concerned that the detailed testing and approval requirements contained in Part 14 may delay production and delivery schedules. NMA recommends, therefore, that the final rule should provide authority for further extension(s) of the one year period, if adequate supplies of Part 14 (BELT) belts are not available within the year.

§75.1731(a) Maintenance of conveyor belts and belt conveyor entries

The proposed rule requires that damaged rollers and other malfunctioning belt conveyor components must be immediately repaired or replaced. This language is open to differing interpretation with regard to the meaning of the words "damaged" and "malfunctioning". Thus, there is no indication that the words simply mean that

components are in an unsafe condition, rather the meaning of the words would appear to be much broader. The proposal also states that the subject components must be immediately repaired or replaced. If one roller is damaged but not in an unsafe condition, the proposed rule still would appear to require it to be replaced as soon as it is discovered, even though a systematic maintenance process with dedicated personnel would be preferable from a safety perspective. Further a missing roller is not a safety issue. Roller spacing design is a function of efficiency of the belt system.

We question why the term "immediately" is associated with a requirement that does not mention any unsafe condition? Existing §75.1725(a) requires belts to be maintained in a safe operating condition or removed from service immediately. This proposed regulation, however, is wide-open to interpretation and still requires conditions that do not pose an immediate safety hazard requiring immediate correction. This would also open the possibility of numerous inconsistent enforcement actions concerning examinations, even though examiners' primary duties are to detect hazardous conditions. We believe the current regulation (§75.1725(a)) as it relates to conveyor beltlines has been well-defined overtime and completely covers the safety concerns identified with proposed §75.1731(a) making this proposal unnecessary and inappropriate for this rulemaking. In any event, the wording should be clarified to define the intent, which in its present form is not clearly defined or understood.

§75.1731(c) Accumulation of noncombustible materials

This proposal requires that noncombustible materials shall not be allowed to accumulate in the belt conveyor entry. This requirement is completely unnecessary and confusing as to its origin and intent. It is open to differing interpretation in reference to the terms "accumulation" and "noncombustible" and compliance with such a provision will be virtually impossible. The manner in which this is written could include, for example, such materials as accumulations of waste rock or gob material if the rule is strictly interpreted as written. The intended purpose of this requirement is perplexing. §75.1725(a) amply covers concerns with frictional heating hazards and slipping and tripping hazards are covered by §75.1403.

Conclusion

To conclude, NMA again wishes to say that with the exception of our specific comments on proposed §14.11(d) and the aforementioned sections of the revisions to 30 C.F.R Part 75, we are generally supportive of the NPR. NMA does not support, however, the gratuitous addition of duplicative regulations or provisions that exact a price for the utilization of a process that is proven beneficial to safety and productive mining. We urge MSHA to carefully consider our comments and ask that the final rules adopted from the NPR reflect them. Should you have any questions about this letter, please do not hesitate to contact me at bwatzman@nma.org.

Patricia W. Silvey
September 8, 2008
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Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Watzman". The signature is fluid and cursive, with the first name "Bruce" and last name "Watzman" clearly distinguishable.

Bruce Watzman
Vice President, Safety, Health and
Human Resources