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June 30, 2003

Mr. Marvin Nichols
Director
Office of Standards, Regulations
And Variances
MSHA 1100 Wilson Boulevard
Room 2313
Arlington, VA. 22209-3939

Dear Mr. Nichols:

These comments are submitted on behalf of the members of the National Mining Association (NMA) and The Bituminous Coal Operators' Association (BCOA) in response to the Proposed Rule amending 30 CFR Part 75 to permit the use of air coursed through a belt entry to ventilation working section (68 FR 3936)(January 7, 2003). We appreciate having the opportunity to submit comments on this important regulatory proceeding.

GENERAL COMMENTS

At the outset let us state our unequivocal support for the practice of using air coursed through belt entries to ventilate working sections and areas where mechanized mining equipment if being removed or installed. We applaud the agency's recognition of this practice and share MSHA's belief that "belt air can be safely used, provided that certain conditions are met" (pg. 3937).

We have long maintained that ventilation systems utilizing air coursed through conveyor belt entries to ventilation working places, when combined with certain safety precautions, is safe, effective and can provide improved safety for miners. We are heartened that the Proposed Rule shares this basic underlying tenet, as required by Section 101(a)(9), which imposes upon the Secretary a duty to ensure that a standard promulgated shall not reduce the protection afforded. We believe the Proposed Rule not only complies with this threshold test but will enhance miner safety and health in those instances where belt entry ventilation is employed.

The preamble to accompany the Proposed Rule documents the long and often circuitous path through which this regulation has proceeded. Since its initial introduction as a Proposed Rule in 1988 the agency and industry have documented, through the more than 90 Petitions for Modification that have been granted, that belt entry ventilation is, with certain safeguards in place, a safe and necessary form of ventilation for many of our

Nation's underground coal mine. While some might argue that the granting of the use of belt air is best handled through the case-by-case Petition process, we regrettably find that this process often becomes mirrored in controversy where issues unrelated to underlying Petition are introduced. Moreover, we believe the agency is within its discretionary authority to propose rules where the safety of a particular practice has been documented through the experience gained via the granting of numerous Petitions for Modification. Lastly, and of significance is the time-consuming and expensive nature of the Petition process itself. The Proposed Rule, once finalized and implemented, will reduce the administrative and paper-work burdens on both the industry and agency while enhancing the safety and health for miners where belt air ventilation is utilized. For these reasons, as well as those documented by the preamble that accompanies the Proposed Rule, we encourage the agency to finalize this proceeding as soon as is practicable.

SPECIFIC COMMENTS

1. As noted in the Preamble accompanying the Proposed Rule, the agency has, "During the last 15-years evaluated, through the petition for modification process, the safe use of belt air as intake air." (pg.3937) While this process has proven to be useful, it has resulted in an evolution of different requirements depending upon the timeframe during which the petition was processed. As technology has advanced the agency has understandably required operators to employ new technology and implementation methods as a condition for using belt entry ventilation. It must be recognized that the failure to amend or revise a pre-existing Petition to require the most modern, most up-to-date technology does not indicate that miners are somehow less protected in those mines operating under the older petitions. Rather, these operations have successfully and safely employed technology to utilize belt entry ventilation given the circumstances existing at that particular operation.

Given this recognition and the significant expense that operations have incurred to implement the provisions of their existing belt air petitions, we encourage agency to include in the final rule a provision that will "grand-father" existing petitions. Failure to do this will impose unnecessary financial and administrative obligations on companies without any attendant safety or health benefit. Simply put, if companies have operated successfully (with no detrimental safety or health impact) under the existing provisions of an approved petition we see little benefit to be gained be requiring an upheaval of those systems merely for the sake of conforming with a regulation that supercedes the petition.

2. 75.351(a) – This section requires that an "AMS operator must be on duty at a location … where signals from the AMS can be seen **and** heard…. (emphasis added). This language conflicts with the discussion in the preamble, page 3952, which requires that the AMS signal can be seen **or** heard by the AMS operator. We believe the intent of the regulation can best be achieved by providing the operator with the ability to design a system that best meets the particular design criteria of the given operation, provided the AMS operator is provided with either a visual or audible signal. While is some instances both an audible and visual signal is necessary in others this is little more than regulatory over-kill. To remedy this we believe the regulatory should be amended to include the

phrase “and/or” rather than the current requirements that will require the installation of both signal types.

3. 75.351(r) will require that the two-way voice communication system be installed in a different entry that is separate from the entry containing the AMS. This provision while appearing harmless on its face will, in some instances, require operators to re-design systems that have operated successfully, for many years, without an attendant safety benefit. While we share the agency’s view that communication is critical during an emergency situation, we are unaware of any circumstances where the placement of both of these systems in a single entry has resulted in communication failures. Having said this however, we believe the agency, should it maintain this requirement in the final regulations, only impose it on new installations after the effective date of the newly promulgated regulation.

4. The agency has specifically solicited comments on the use of lifelines to assist miners egress during situations where visibility is diminished. While we are cognizant of the need to provide miners with all possible tools to assist them during emergency situations, we are weary of supporting a system whose integrity is difficult to maintain during normal let alone emergency situations. While some operations have had limited success with lifelines the majority of operations have had difficulty maintaining their integrity to the degree that would be imposed by a regulatory requirement. We would encourage the agency to forego imposing a requirement for the installation through this proceeding. If necessary, we believe this would be more properly addressed through consideration of revisions to § 75.380 that sets forth the general requirements for escapeways in underground bituminous and lignite coal mines.

Sincerely,

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NMA