

# United Mine Workers of America



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June 30, 2003

**By fax (202) 693-9441  
and courier**

Marvin Nichols, Director  
Office of Standards, Regulations and Variances  
Mine Safety and Health Administration  
1100 Wilson Boulevard, Room 2313  
Arlington, VA 22209-3939

**Re: Proposed Rule - Safety Standards for the Use of a Belt Entry  
as an Intake Air Course to Ventilate Working Sections and  
Areas Where Mechanized Mining Equipment is Being Installed  
or Removed**

Dear Mr. Nichols:

Enclosed are the comments of the United Mine Workers of America regarding the above-referenced Proposed Rule. I am faxing you a copy of our comments (without exhibits) and sending, by courier, our comments, with the exhibits.

Should you have any questions, please do not hesitate to contact me. I can be reached at (703) 208-7180.

Sincerely,

A handwritten signature in black ink that reads "Joseph A. Main".

Joseph A. Main  
Administrator, Occupational Health and Safety

Enclosure

MSHA  
U.S. Dept of Labor

2003 JUN 30 PM 4:13

RECEIVED Office of  
Standards, Regs,  
and Variances

**AA76-COMM-106**

The United Mine Workers of America (UMWA or Union) is pleased to offer these comments on the *Underground Coal Mine Ventilation – Safety Standards for the Use of a Belt Entry as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed*, proposed rule.

The Federal Mine Safety and Health Act of 1969, Public Law 91-173, as amended by Public Law 95-196 to create the Federal Mine Safety and Health Act of 1977 (the Act), was enacted by the U.S. Congress in response to the horrific conditions present in the nation's coal mines. The event most frequently cited as the basis for the creation of the Act is the November 20, 1978, disaster at the Consolidation Coal Company's Consol No. 9 Mine in Farmington, West Virginia. That tragedy, which claimed the lives of 78 miners, 19 of whom remain entombed at the operation, was witnessed by hundreds of thousands of Americans on their television sets. As a result of the Farmington tragedy, miners, widows, orphans and coalfield communities all joined together to call for federal intervention to create health and safety regulations. Thus, issues that had previously been ignored for years became the focus of the nation.

With the images of death and destroyed lives beaming into their living rooms, for the first time the American public understood the plight of miners and stood with them to demand action. The nation's miners have always recognized the help and goodwill that so many people offered during that dismal time. They also recognized that for years before the Farmington disaster thousands of miners died and tens of thousands were maimed by an industry without a conscience, abetted by a government unwilling to require adequate protections. Neither have miners forgotten the thousands who have died or those who will die from the dreadful effects of black lung disease.

The idea of comprehensive health and safety regulations prior to the enactment of the 1969 Act by the federal government was always considered a grand notion that never came to fruition. Since that time, however, miners have come to value the protections their sacrifices have created. They watch carefully the attempts by individuals, business groups and government agencies to change the Act or alter regulations on their behalf. Many times they realize that the "noble causes" put forth by others are not necessarily in their best interest, as is the case with this proposed rule.

Section 303(y) (1) of the Act is directly affected by the proposed rules. That is also contained in 30 C.F.R. 75.350. The Act specifies that, "In any coal mine opened after the operative date of this title, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working areas." [Emphasis added] This section sets clear restrictions on ventilating belt haulage entries. The standard requires the velocities of air to be limited only to the amount needed to ventilate such belt entries and prohibited the air coursed through such belt entries from being used to ventilate working places.

A clear concern of Congress was that high velocities of air being coursed through those belt entries could propagate fires and swiftly have smoke and poisonous contaminants dumped on the coal faces where miners work. It could also increase respirable dust reaching the coal face which causes the black lung disease. The proposed rule would eliminate these protections.

Miners realize the need to properly and adequately ventilate the working areas of the mine. History has shown, as noted above, the horrific consequences that can result from inadequate ventilation and accumulations of coal dust. If enacted, this rule has the potential to create those very same conditions in the Nation's mines. Section 303(b) of the Act states, in pertinent part, that "...the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and other explosive gases and to reduce the level of respirable dust to the lowest attainable level." The application of the proposed rule would violate this portion of the Act.

The UMWA has determined by reviewing the proposed rule and attending MSHA's public hearings on the matter that the measure of health and safety protections miners enjoy under the current rule would be eroded if this proposal becomes final, which is a direct violation of Section 101(a)(9) of the Act. Therefore, the Union submits the following comments, suggestions and recommendations to the Agency and as matter of public record demands the proposal be withdrawn.

The UMWA does so based on the proposed rules' adverse impact on miners, the Agency's decision to ignore the comments of miners regarding this matter over the course of countless public hearings and the proposal's direct violations of several sections of the Mine Act. The Union will demonstrate that this proposal is contrary to the specific mandates set down by Congress. The mandates of the Act are not arbitrary suggestions established for MSHA to use as guidelines; rather, they represent the structural basis for promulgating increased protections for miners. The Agency does not possess the legal authority to diminish the current level of protections for miners. Because this proposed rule would effectively do just that, it must be withdrawn.

When promulgating any rule the Agency is required to work within the scope of the Act. In particular MSHA must take only that action regarding the regulatory process that adheres to the Congressional declarations that –

- (a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner;
- (b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal and other mines cause grief and suffering to miners and their families;
- (c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent

occupational disease originating in such mines; .

(g) It is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education and Welfare and the Secretary of Labor to develop and promulgate improved mandatory health and safety standards to protect the health and safety of the Nation's coal and other miners; ... (4) to improve and expand in cooperation with the States and the coal or other mining industry, research and development and training programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.

With the issuance of this proposed rule, the Agency ignores the very basis of the Act. The proposed rule does not adhere to the mandates established by Congress in Section 2 of the Act.

There is an attempt on the part of the Agency to focus on the desires of the industry without regard for the health and safety of the miners. In many instances the conditions that exist at a particular mining operation are unique. The circumstances in which a miner finds him or herself are based on the peculiarities of the operation. This basic consideration must take precedence over a desire to ascribe an overreaching regulation to the entire industry.

The Union is acutely aware of the need to address specific mining conditions that can impact a mine's ability to affordably produce a product. These issues can be anything from roof control, ventilation, coal seam height to moisture content and crushability. However, it must also be recognized that these factors cannot override the health and safety protections to which miners are statutorily entitled. In crafting the Act, Congress was mindful of the need to allow operational flexibility in those rare instance where it was necessary. Section 101(c) addresses these situations and is the only practical solution that can be safely applied regarding the use of the belt entry for intake ventilation.

The proposed rule violates Section 101(a)(9), Section 303(b), Section 303(y)(1) and Section 2(a) of the Act and therefore must be withdrawn. Miners must be certain of the level of protection they will receive when entering the mine. The proposed rule eliminates that certainty and diminishes their protection. The Union seeks that the use of the belt entry for intake ventilation remain the subject of 101(c) petitions for modification. This method of approving the use of belt air for intake ventilation offers miners the greatest participation in the development of mining plans. Therefore, it allows for the highest degree of safety for miners at each operation.

The proposed rule is in conflict with Section 2(b) and (c) of the Act. Section 2(b) recognizes the serious conditions that were present in the mining industry, as well as the grief and suffering these conditions caused to miners, their families and the greater community. With this understanding in mind, Congress wrote Section 2(c) that states, "there is an urgent need to provide more effective means and measures for improving the working conditions and practices

in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational disease originating in such mines.”

The proposed rule turns a blind eye to the hazardous conditions that still exist in the nation's mines. The failure of the Agency to recognize that reality place it at odds with the requirements of Section 2(c). The proposal will increase the amount and distribution of respirable coal mine *dust* and *float coal dust* in the belt *entry*. This dust will be deposited on the roof, ribs and bottom of the entry, greatly increasing the threat of an explosion. The potential threat is an inseparable component of the proposed rule, and the Union argues that this threat is simply too great to risk.

The potential for harm to the individual miner is also an inherent by product of this proposed rule. The air coursing through the belt entry will carry with it increased amounts of respirable dust. These elevated levels of respirable dust will increase the miners' chances of contracting black lung disease. This too is an unacceptable risk.

The Agency need look no further than the Energy West Mining Co's. Petition request (Exhibit #1) of August 1999 to understand the severity of the problems belt air usage may create. That request stated, “The requirement for belt air to ventilate the face adds additional respirable dust to the air used to ventilate the face... The increased dust causes an increased dust problem to the longwall face. Even if the belt is in compliance with a 1.0 mg/m<sup>3</sup> standard you are still adding respirable dust that will affect the longwall MMU.” The velocity of air the operator was discussing was the “minimal” 50 feet per minute approved in the company's previous PDO.

This request by the operator could not possibly be more telling. With minimal air flow the operator admitted a greater risk of respirable coal mine dust exposure to miners. This increased dust level is not acceptable, but it would be a by product of the proposed rule.

The proposed rule's inability to be applied within the confines of Section 2(b) and (c) renders it fatally flawed. When such a conflict exists between an Act of Congress and a rule proposed by an agency charged with its enforcement, the agency must acquiesce to the legislative mandate. Therefore, the proposed rule must be withdrawn.

The Agency must uphold the Congressional mandate to enforce the law and promulgate rules within the framework of the Act. MSHA has the right through the 101(c) petition for modification process to entertain issues such as this on a mine-specific basis. The Union does not believe it is in the best interest of miners for MSHA to apply such a broad industry-wide standard regarding this matter. Further, the Union sees the application of the proposed rule as a reduction in miners' protection, which is strictly prohibited by the Act. Section 101(a)(9) states, “No mandatory health and safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory safety or health standard.”

In Section 2(g) the intent of the Act is made very clear: “...to establish interim

mandatory health and safety standards..” Section 303(y) (1) is one of those interim standards that deals with the use of belt air. It specifies that, “In any coal mine opened after the operative date of this title, the entries used as intake and return aircourses shall be separated from belt haulage entries, and each operator of such mine shall limit the velocity of air coursed through the belt haulage entries to the amount necessary to provide an adequate supply of oxygen in such entries and to insure that the air therein shall contain less than 1.0 volume per centum of methane, and such air shall not be used to ventilate active working areas.” This section sets clear restrictions on what such air may be used for in the mine. The remaining language of Section 2(g) establishes the requirements for promulgating a rule to replace any interim standard. The Act requires “the Secretary of Health, Education and Welfare and the Secretary of Labor to develop and promulgate improved mandatory health and safety standards to protect the health and safety of the Nation’s coal or other miners.”

The proposed rule would afford operators a blanket regulation to utilize belt air for ventilating active workings. This violates the interim standard Section 303(y) (1) cited above. The Agency does not possess the legal authority to promulgate such a standard. Further, the proposed rule does not offer improved health and safety protections as required by Section 2(g) and 101(a)(9) of the Act. For these reasons MSHA is barred legally from making such regulations. Instead, the Agency should use the tool given it by Congress under Section 101(c) to address on a case-by-case basis belt air issues that may arise at mining operations.

Current Section 75.350 is derived without substantive change from Section 303(y) of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act). Both the Senate and House versions of Section 303(y) included belt and trolley haulage entries within the coverage of the same section. Both the Senate and House versions of the bill required physical separation of belt and trolley haulage entries from intake and return aircourses, required air velocities to be limited in belt and trolley haulage entries, and prohibited these entries from being used to provide ventilation to working places. Both versions of the bill also included the existing distinction between mines opened prior to the effective date of the provisions and those opened after.

In reporting its version of the bill, the Senate stated:

“The objective of the section is to reduce high air velocities in trolley and belt haulageways where the coal is transported because such velocities fan and propagate mine fires, many of which originate along the haulageways. Rapid intake air currents also carry products of the fire to the working places quickly before the men know of the fire and lessen their time for escape. If they use the return aircourses to escape, the air coursed through may contain these products and quickly overtake them. Also, the objective is to reduce the amount of float coal dust along belt and trolley haulageways.

In some mines, it is not possible to isolate the intake and return airways from the haulageways. The latter is particularly true in a two or three entry system where

the haulageway, of necessity, must be used to ventilate the face. Even in a multiple entry system of more than three entries, in some cases the haulageway runs for miles and some parallel entries may be blocked or partially blocked from roof falls, particularly in low coal, and, in such cases, it is not practical to open such entries.

While it is necessary to reduce the velocity of air in the haulageway, complete elimination of air in the haulageway is not desirable, because it would create a new hazard. Some air is essential. The air velocity however, must be limited to an amount sufficient to insure an adequate supply of oxygen in the haulageway, to protect the health of miners, and to provide that the air not contain accumulations of methane.” (Legislative History (Leg. Hist.) of the Federal Coal Mine Health and Safety Act of 1969, (1969 Coal Act) S. Rept. No. 91-411, 91<sup>st</sup> Cong., 1<sup>st</sup> Sess., pp. 64-65)

The managers on the part of the House of the 1969 Coal Act, stated:

“The Senate bill provided for the separation of intake and return aircourses from belt and trolley haulages entries in the case of all mines, except where the entry system does not permit such separation, for the purpose of limiting the velocity of air coursed through these haulage entries to minimize hazards associated with fires and dust explosions originating in these haulageways. The House amendment required such separation from belt haulage entries and, in the case of new mines and in new working sections of existing mines, the Secretary, where there are trolley haulage systems, shall require a sufficient number of entries or rooms as intake aircourses in order to limit the velocity for the purposes mentioned above. The conference agreement adopts the House provision, but it is the intention of the managers that the Secretary carefully review this problem with a view to devising improved requirements for minimizing these hazards to the miners at the working faces from high velocities along belt and trolley haulageways on intake air. (Emphasis added) (Leg. Hist. 1969 Coal Act, House Rept., No. 91-563, 91<sup>st</sup> Cong., 1<sup>st</sup> Sess., p. 1525)

In discussing the summary of the 1977 Mine Act, the Senate Report stated:

“The Secretary can promulgate new standards, if needed, but new standards in areas covered by existing standards cannot reduce existing levels of protection.” (Leg. Hist. 1977 Mine Act, Sen. Rept., No. 95-181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., p. 599)

The Senate Report further stated:

“As is the case under the Coal Act, S. 717 requires that all new or revised standards promulgated by the Secretary must afford the same level of protection

which is provided by current standards.” (Leg. Hist. 1977 Mine Act, Sen. Rept., No. 95-181, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., p. 611)

The proposed rule does not meet the requirements of the Act or the express intent of Congress as noted above.

The Union has determined that issuance of the proposed rule would violate Section 101(a) of the Act which states, “The Secretary shall by rule in accordance with procedures set forth in this section and in accordance with section 553 of title 5, United States Code develop, promulgate and revise as may be appropriate, improved mandatory health and safety standards for the protection of life and prevention of injuries in coal or other mines.” The UMWA is convinced the proposed rule would diminish the protection miners currently enjoy. Therefore, it does not meet the requirement of Section 101(a) to “improve mandatory health and safety standards.”

The use of the belt entry to ventilate active working will inevitably increase the dust levels reaching such areas. This will result in increased exposure of miners to respirable coal mine dust that will be carried in the air current to the active work areas after being coursed through the belt entry. This would be contrary to Section 303(b) which states in pertinent part, “the Secretary shall prescribe the minimum velocity and quantity of air reaching each working face of each coal mine in order to render harmless and carry away methane and other explosive gases and to reduce the level of respirable dust to the lowest attainable level.”

The Union is concerned the Proposed Rule will have a significant and detrimental impact on miners. The depth of the affect goes far beyond 30 CFR 75.301, 75.371, 75.372, 75.380, 75.350, 75.251 and 75.372 cited by MSHA. The Union intends in these comments to address the changes the Agency has proposed in each section of the regulations. However, because of the problems this rule will create with other sections of the regulations, as well as mine specific modifications to certain statutes, the Union will offer evidence that the new rule, as currently written, significantly reduces the safety protection miners currently enjoy.

This situation is further compounded by the Agency’s decision to withdraw several proposed safety regulations including: Belt Flammability, Training and Retraining of Miners, Continuous Monitoring of Respirable Coal Mine Dust and Self Contained Self Rescuers. These rules, if enacted, would have enhanced protections afforded to miners when implemented in conjunction with site specific petitions for modifications under 101(c) of the Act.

In writing this proposed rule, the Agency arbitrarily selected information to support its positions. It chose to ignore other relevant and significant information, such as: Reports of Investigations 9380 (Exhibit #2) - Fire Detection for Conveyor Belt Entries, 9426 (Exhibit #3) - Analysis of Underground Coal Mine Fires and 9570 (Exhibit #4) - Hazards of Conveyor Belt Fires. It also singled out testimony of some individuals given during previous Ventilation Rule Hearings regarding ventilating with belt air, while excluding, for unspecified reasons, the



information presented by others.

The Agency extensively cited two reports in the preamble to the proposed rule as the basis for making many of the determinations. In that regard, the Union is extremely disappointed with the amount of validity given to the Belt Entry Ventilation Review (BEVR) Report despite the lengthy objections we offered to many of its finding during the hearings on the Ventilation Rule. Finally, the UMWA is disturbed by the method that MSHA used to give the appearance it is complying with the recommendations of the Advisory Committee on the Use of Belt Air to Ventilate the Production Areas of Underground Coal Mines and Related Provisions (Advisory Committee).

In the Federal Register, Vol. 68 No 17, Page 3937, The Agency states, “Commenters from labor, on the other hand, maintain that the use of air in the belt entry reduces safety due to increased fire hazards and greater dust levels. Due to these divergent views [operators, academia and labor] when the ventilation rule for underground coal mines was finalized in 1992, it did not include the provisions that would have allowed mine operators to use belt air to provide additional intake air to the working sections”. The position expressed by the UMWA during that earlier round of hearings was based on extensive investigations and research. That position is as relevant today as it was 10-15 years ago and the Union stands by its previous comments and conclusions.

There should be no doubt that while belt air petitions have been approved on a mine-by-mine basis and are in place at many mining operations, the use of belt air to ventilate work areas does introduce additional and dynamic hazards that would otherwise not be present. These hazards can be mitigated by incorporating specific safety controls into the mining plans at the operation. It must be understood that the Union is *not* taking the position that these hazards are eliminated by additional safety precautions, rather the UMWA recognizes hazardous conditions created by the use of belt air may be adequately controlled by utilizing site-specific unique safety enhancements. The proposed rule ignores the safety benefits provided by the PDO’s currently in force at various mines throughout the Nation and attempts to apply a “one size fits all” philosophy in its place. This approach will significantly diminish the level of safety miners currently enjoy.

The Union would argue that a PDO currently approved for use at a mining operation has the full force and weight of a statutory regulation. The conditions they put forward are requirements the operator must meet in order to use belt air to ventilate a working area. The Agency recognizes these mandatory requirements for purposes of compliance and enforcement. The simple fact is, the conditions outlined in the PDO become the mandatory standard at the particular operation to which they are prescribed. Broad changes in the writing and application of the rule, as is proposed here, will eliminate protections miners have and place the Agency in a position contrary to their Congressional mandate. Section 101(c)(9) of the Federal Mine Safety and Health Act of 1977 (the Act) states, “No mandatory health or safety standard promulgated under this title shall reduce the protections afforded miners by an existing mandatory health or

safety standard.” Congress strictly forbid the Agency from enacting any rule that would offer lesser protection than miners currently enjoy. The Union believes the application of the proposed rule in its current form would undercut the health and safety of miners, and must be withdrawn.

### **Belt Entry Ventilation Review (BEVR) Report (Exhibit #5)**

The Agency has offered the findings of the BEVR as a significant basis for the decision to propose this rule. In the background statement for the rule the Agency cites the BEVR’s finding that, “...directing belt entry air to the face can be at least as safe as other ventilation methods provided carbon monoxide monitors or smoke detectors are installed in the belt entry.” The Agency appears to be summing up the report and using that as justification for moving this rule forward. The UMWA would suggest that the Agency is focusing on a single aspect of the problem that is created by utilizing belt air to make its case. However, this approach does not enhance miners’ safety. In fact, in many instances it will result in a diminution to their safety. Monitoring the mine atmosphere for carbon monoxide, or using smoke detectors, may be critical in improving some aspects of safety when using belt air, however far from the Agency’s implication here, it does not begin to adequately address other inherent complexities of the issue.

The Union would argue that MSHA’s brief summation of the BEVR parallels the content of the Report itself. The UMWA authored extensive comments regarding that report. In the hearings on the Proposed Rule; **Safety Standards for Underground Coal Mine Ventilation**, the UMWA was highly critical of the report for using data and research that was incomplete, narrowly focused, misleading; the UMWA it did not support the Committee’s conclusions. The Union also objected strenuously to the use of this report as a basis for the Agency’s guidelines for the belt air portion of the rule.

The UMWA was not alone in its critique of the Report and MSHA’s use of it. The U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health (NIOSH) was also deeply critical of the reviewers’ findings. NIOSH noted, “the practice of ventilating with belt air at any velocity is unsafe and unhealthy.” Further, “the use of high velocities would increase fire and explosion hazards from coal dust.” NIOSH concluded that, “The use of belt air to ventilate the working faces was not a safe practice, the allowance and use of belt air to ventilate the working areas of the mine is a diminution of the protections of the miners’ safety and health as provided by the Mine Safety and Health Act of 1977.”

The Union has again reviewed the recommendations of the Belt Entry Ventilation Review Committee and determined the Report does not adequately address the conditions the use of belt air will create. The authors of the Report even acknowledge the need for additional research as well as a different approach to maintenance of the mine. The UNIWA addresses the recommendations in the BEVR as follows:

- 1) **Increased emphasis should be placed on belt maintenance, belt entry clean-up and rock dusting.**

Historically, belt conveyor entries have posed significant hazards to miners. Despite this fact, poorly maintained belt conveyor entries do not receive adequate or routine maintenance. A review of MSHA statistics reveals this is still a chronic problem much as it was at the time the report was first issued. Coal spillage, float coal dust and accumulations of combustible materials (paper, wood, etc.) are continually cited by the Agency's inspection personnel.

Mark Segedi, April 10, 2003, Holiday Inn Meadowlands, Washington, PA, pp. 40-42:

"Also, sir, I would like to read some conclusions out of the report. "The root cause of the accident was the operator's failure to recognize and correct hazardous conditions along the 1B belt flight. Rollers were removed because the bearings had failed. However, the rollers were not replaced. This contributed to the misalignment of the belt, which caused the belt to cut into steel structure. The cutting action separated the belt into thin streams that accumulated around the shafts of the moving rollers and structure. "The cutting action also produced sufficient heat to discolor the steel. Damaged top and bottom rollers were observed at several locations along the entire belt flight. This condition is a source of frictional heating. There were accumulations of loose coal on both sides of the belt and hard packed coal under the moving bottom belt. The hard packed coal was in direct contact with the bottom belt and bottom rollers. "Additionally, the 4-inch diameter water line was not connected to a water supply from the 26 cross cut to the 31 cross cut, a distance of approximately 1000 feet. The condition limited firefighting capabilities and compromised the safety of the miners. The power cables and wooden posts and cribs located in the belt entry at the 26 cross cut provided additional fuel that may have rapidly intensified the severity of the fire. "Smoke rolled back towards the longwall face area, prevented approaching the fire from the in by fresh air approach. Redirecting the air in order to begin to fight the fire from the outby side delayed firefighting activity." So there's been a lot of questions about the belt, and you'll probably be hearing a lot more testimony today. I'm sure, sir, if you look back at MSHA's records, the amount of violations, not only at Mine 84, but all the other coal mines along the belt conveyor systems. That is one constant source of fire. And believe me, sir, it was proved very well in Mine 84. Enforcement actions, "A 103(K) order was issued on January 6th and terminated on January 31, 2003. It took us approximately from January 6th to January 31st to fight the fire and put the fire out at the mine. The order was issued to ensure the safety of any person in coal mine until an examination or investigation is made to determine that the mine is safe." The citations and orders were issued yesterday to 84 Mining Company as a result of the fire."

For the Agency to offer this recommendation as a solution, is a problem in itself. Spillage has continued to exist in the mining industry for years, and without the Agency putting the force of law behind this practice, it will continue. Operators who have never found it necessary to improve belt conveyor clean-up will not be inclined to reconsider their maintenance program simply because the Agency suggests it when using belt air to ventilate working areas.

**2) Emphasis should be placed on proper construction and maintenance of stoppings separating intake escapeways from intake entries.**

The Agency has never shown the institutional will to hold operators accountable for poorly constructed and inadequate stoppings. This rule will have no effect on stoppings that meet the minimum requirements of the law, but do not provide adequate protections to prevent the quick propagation of a burn through. The Agency has for too long accepted the status quo and a recommendation to improve stopping construction and maintenance will not be heeded by mine operators.

The Union has continually railed about the condition of the stoppings in mines. Unfortunately, the problem is not seen as a high priority for the industry or Agency. If the Agency is to be taken seriously, it must enforce a stricter standard with regard to minimum requirements for stopping construction and maintenance. However, without changes to the proposed rule, the changes necessary to ensuring safety are absent and contribute to a rule that would diminish miners' safety. The UMW offered comments regarding stopping problems at the public hearings.

Larry Kuharcik, April 10, 2003, Holiday Inn Meadowlands, Washington, PA, p. 50:

“A Kennedy stopping is a metal stopping. We found numerous belt line stoppings constructed wrong, using wrong panels, improper panels, which has been corrected since then when we brought it to the company's attention. But they were constructed wrong. Yet, the review doesn't require proper construction and maintenance of stoppings, just suggest it.”

Jeff Mahalik, April 10, 2003, Holiday Inn Meadowlands, Washington, PA, pp. 66-67

“Plus, we use solid core blocks on our stoppings and I've seen some of them leak. We had a bad roller fire one time. We're trying to get out by this area and we had the smoke coming through the solid core blocks and through the top and through the bottom.”

Mark Segedi, April 10, 2003, Holiday Inn Meadowlands, Washington, PA, pp. 39-40

“Before Consol purchased Mine 84, we used sometimes the Kennedy stoppings, minimal stoppings. Also, the basic core block that you use to put a house foundation along or a stopping belt line. My experience with the mine fire that happened on January 6, 2003 that those stoppings would not have held up at all with the intense amount of heat that was generated by the mine fire at Mine 84. Luckily, the standard now at Mine 84 that Consol uses is at 8-inch solid cement block. That, sir, in my experience was a very, very positive thing that helped control that fire from

breaking out from the belt line entry into the other entries and it gave us precious amounts of time to get our firefighting efforts under control to stop that fire. I'm not sure if you gentlemen know. We did control that fire. The fire is out and the mine is back to work. Luckily, Consol uses those kinds of block, which isn't the minimum standard. When I talk about minimum standards, they do not have to use that kind. But any other kind of material used there, that fire off the belt line would have breached that belt entry into the other entries and I'm sure we would have lost a coal miner."

**3) Sections should be designed by entry location, number of entries or pressure differential, to enhance the protection of intake escapeways from contamination by fires in adjacent entries.**

The UMWA would suggest a major motivating factor for moving this rule is tied to the number of entries operators are seeking to drive in the development sections. Unfortunately, driving additional entries to address the problem of insufficient face ventilation, which is the position the Union believes to be the proper solution, is not the goal of this proposed rule or the motive of the operators. Instead, they seek to maintain two or three entry systems, that leave sections starving for ventilation and solve the problem by pushing additional air through the most hazardous entry in the mine. Clearly, the desire to increase face ventilation in this manner is not inspired by a need to increase safety, but by a will to reduce cost.

In the comments submitted during the ventilation rule hearings NIOSH made this point clear when it stated, "Belt air usage represents the least expensive method of increasing ventilation to the face - not the best for worker health and safety.

Maintaining the intake escapeway at a higher pressure than the belt entry and entries in common with the belt is not an absolute requirement in the rule. The UMWA believes such a requirement is necessary to insure the health and safety of miners. Further, this must be accomplished through natural pressurization whereby the air entering the intake escapeway is always maintained at a higher velocity than air entering the conveyor belt entry. The UMWA asserts that establishing a system of false pressurization by means of restricting or regulating the amount of air flowing from the intake escapeway to the working face, would not be as safe and would effect a diminution to miners' safety.

**4) Intake escapeways should be maintained free of potential fire sources unless such sources are protected by fire suppression or other acceptable devices.**

The Union is disturbed that such a recommendation has made its way into this document. It is the position of the UMWA that maintaining the intake

escapeway as free as possible from potential fire sources should be already the practice at all mines, and should not be tied to the use of belt air for face ventilation.

- 5) **Directing the air through the belt entry and to the return through a restrictive regulator or pipe overcast does not comply with Section 75.236 and should be discontinued.**

Based on information available, MSHA no longer accepts this practice.

- 6) Training should include drills in communication and evacuation techniques and include precautions to be taken for escape through smoke.

Training on new and existing plans or regulations is an extremely important element insuring the health and safety of miners. Much emphasis is placed on training miners for new tasks, new and experienced miners, first aid and other issues. The UMWA is on record as supporting training on a much broader scale than is currently the practice. Based on that fact and the changes in the mining industry, the Union is concerned that there is insufficient time allotted for such training. Continuing to add training *subjects* without requiring additional *time* to adequately educate the miners does not obtain the desired result. Having too many subjects in the current training regiment overburdens the systems and important issues do not get the attention they deserve. Support for this and other training must be contingent upon a requirement that specifies additional training time.

- 7) Belt entries used to ventilate the working places should be equipped with carbon monoxide monitoring systems or smoke detectors. MSHA and the Bureau of Mines should encourage development and testing of improved smoke detectors. MSHA should initiate the development of performance standards for CO monitors and smoke detectors. MSHA should continue to stress maintenance of CO monitoring systems.

The Agency continues to hold the position that the use of either CO monitors ~~or~~ smoke detectors in the conveyor belt entry is sufficient protection for miners in sections using belt air to ventilate the face. The UMWA asserts the use of both CO monitors and smoke detectors should be utilized in these entries to maximize the protection miners receive as a general rule. They should not be used as an outright replacement of protection contained 303(y)(1). The available technology and new technology driven by such a requirement would insure state of the art fire detection systems.

The Union also views entries in common with the conveyor belt entry as an

area that requires special attention. The UMWA has often argued that the safest method of controlling the hazards associated with the belt entry is to have it isolated from all other entries. Our position has not changed, however, the Agency has approved mining plans that allow for multiple entries in common with the conveyor belt entry. Because of that, the Union believes carbon monoxide monitors and smoke detectors should be required in each these entries at intervals no greater than those in the conveyor belt entry. Entries in common with the conveyor belt entry should be deemed part of the coal haulage system and protections should be applied as if they were.

Miner, Floyd Campbell expressed his concerns regarding MSHA decision in the proposed rule to change the frequency of calibration inspections. “Also, they were changing the inspections of calibrations from 7 to 10 days, that would be a decrease in the percent in number over the length of a year, from 52 to 36. I don’t think that’s a good idea to decrease the number of inspections for anything.”

The UMWA contends that increasing the time between, and reducing the number of calibration inspections, effects a reduction to miners’ safety.

**8) MSHA should consider requiring improvements to or replacement of point-type heat sensors.**

Much has been accomplished through various research efforts by labor, industry and the government. These efforts have been extremely beneficial in improving fire detection and monitoring. There is no need at this point in time for any operation to be using point-type heat sensors. Because of technological advances, the Union believes all mines can and should be equipped with CO monitoring systems and smoke detectors, regardless of the use of belt air to ventilate working areas. Such systems should be required in all entries that are common with the conveyor belt entry.

There is also a need for the industry not to just accept current technology as adequate to meet a current requirement and eliminate further research and advances. The rule must include language that drives the industry to continue to seek better technology.

**9) Where belt air is directed outby from the section, water lines should be relocated from the belt to a separate intake entry to facilitate fire fighting activities.**

The recommendation offered here is not germane to the subject. Belt air traveling outby cannot be used to ventilate working faces in the mine. However, the

need to protect the integrity of fire fighting equipment including water lines is important. This is true regardless of the direction of the air flow. Mining designs and plans should be reviewed to insure this equipment is placed in locations that will assure their availability and immediate access in the event they are needed.

- 10) Further research should be conducted to evaluate the impact of air velocities on underground mine fire fighting and to provide information on the growth and spread of mine fires involving material other than conveyor belts.**

The UMWA supports further evaluations of fire fighting in underground mining. The Union does not see this as a subject that should be limited to the implementation of any particular rule. A better understanding of the hazards that may be encountered during such operations would benefit miners and the operator.

The **Belt Entry Ventilation Review Report** is no more relevant today than it was when it was first published in July of 1989. The BEVR contains nothing new that would convince the UMWA there is any reason to recognize its validity today. The Union's position that the Committee assigned to conduct this review did nothing more than condone a position the Agency had taken is based on sound judgment.

A narrowly focused, incomplete and misleading report that did not support its own conclusions does not mature and become better with age. It is, as it was when first introduced, an irrelevant document that should not be the basis for formulating any changes in mine health and safety standards. The Union strenuously objects to the Agency dragging this document off the shelf after all these years and billing it as more than what the facts show it to be. As shown by these and other comments in the record, implementation of a rule based on the BEVR would result in a diminution in miners health and safety.

## **Advisory Committee**

### **Use of Air in the Belt Entry to Ventilate the Production (face) Areas of Underground Coal Mines and Related Provisions (Belt Air Advisory Committee or Advisory Committee) (Exhibit #6)**

The UMWA has never fully endorsed the recommendations offered by the Belt Air Advisory Committee. The Union believes that its report should be the starting point for discussions on what additional health and safety protections may be necessary to mitigate the hazards introduced in the mine by the use of belt air.

However, rather than addressing what the UMWA sees as short-comings in



the Advisory Committee recommendations by adding additional protections for miners, the Agency has chosen to eliminate some of the suggestions. In essence the Agency has determined it is more acutely aware of the needs of miners regarding this matter than the panel appointed by the Secretary of Labor to study belt air usage in detail. MSHA has arbitrarily decided what items within each recommendation of the Advisory Committee fits the current rule making and enforcement scheme and laid them out as the proposed rule. This type of selective editing, beyond the deficiencies in the Advisory Committee report, erodes miners' health and safety protections.

Further, the Agency gives no consideration to the protections miners and their representatives have been able to attain at the mine sites through the 101(c) petition process. The Union would argue that the recommendations of the Advisory Committee, coupled with language currently used in these petitions, should have been the starting point for MSHA's writing of this proposed rule. Instead, the Rule eliminates these protections that many miners currently possess. These protections carry the full weight of a statutory regulation and are fact in enforced as such at the mine site. The Union objects to the Agency's attempt to strip these enhanced health and safety requirements from miners at operations where such petitions resulted in mine-specific conditions and protections..

The Advisory Committee offered twelve (12) recommendations for the Agency to consider for the use of belt air to ventilate the working areas. The UMWA would offer the following comments regarding each:

The Agency and Advisory Committee agree on the use of belt air, provided carbon monoxide monitors or smoke detectors are installed in the belt entry.

The Union would agree that monitoring and detection systems must be included as a condition when using belt air for ventilation. Technology is available that allows the use of both of these safety devices in the mining industry, and to use one method exclusively does not enhance miner safety.

The Union believes that the use of carbon monoxide monitor and smoke detectors, as well as methane monitoring systems should be utilized in the mining industry regardless of the use of belt air at a particular mine.

Contrary to the assertions of the Agency, it has not fully addressed and incorporated this recommendation of the Advisory Committee into the proposed rule.

Training as outlined in the proposed rule would fall under the already overburdened requirements of Part 48. The Union's reading of the

recommendation concludes that was not the Committee's intent. The fact that it noted training in Item 1 subsections (b) and (c) clearly demonstrates the intent to offer specific training about the system, its function, installation, maintenance and operation to miners. This goes *beyond* what should be incorporated into Part 48.

Miners and their representatives made the following comments regarding MSHA's training requirements under the proposed rule:

Gary Trout, April 8, 2003, Charleston, WV, p. 21-23:

"The first item here is actions before using belt air for ventilation. I would like to take an excerpt from it. It says the proposed changes should be outlined in the mine ventilation plan. The miners shall be trained in the basic principles of early warning fire detection systems and actions required in the event of such alarm. Appropriate personnel for responsible for installation, maintenance, operation and inspection of the system should be trained in their duties."

"Just to stop right there for just a second and make a couple of quick comments here. I agree that we need more training and I agree I think the more training we have, the better miners we are, the more safer we are. As we go on down, just to skip a couple of items here, it says these specific training requirements could include be included in the training required under part 48. where I have a problem. Part 48 is pretty crammed up the way it is right now with all different parts of training that's required there. I think it's time that we need to step back and take a look and maybe have an addition - more than eight hours training or have an additional time span more time spent in training."

Butch Oldham, May 1, 2003, Lexington, KY, p. 30:

"In Kentucky, instead of the 8 hours, we've got the 16 hours of annual retraining, but still, we look at things that the agency puts on every time a petition is approved, every time a new rule is approved, we say, include it in the training program. But there is never any additional time allotted. So if you've got a full-rounded training program now and you're teaching everything you're suppose to in your 16 hours with Kentucky or 8 anywhere else, then what do you take away to provide the training that's required for these petitions and for the new rules. So that's something we've got to look at."

Dwight Cagle, April 29, 2003, Birmingham, AL, p. 54:

"Getting back to the training, everybody has touched on it. Like I said, we need more training, everything is crammed into the eight hour refresher training now

-- fire protection, fire fighting, evacuation, dust, new miner regs coming in on the high voltage miner -- we've got all this to be covered in our eight hours. They're cutting everything short on this."

The Committee made special note that, "...early warning fire detection system should be inspected by MSHA." The Committee clearly understood MSHA's responsibility to inspect mining operation and chose to place special emphasis on the inspection of Atmospheric Monitoring Systems (AMS). The Agency does not appear to have given the Committee's request any weight at all. It has determined to include these inspections as just another portion of a regular inspection. That is not what was intended by the Committee in this case.

The air velocity in conveyor belt entry and location of sensors is confused in both the Advisory Committee report and the proposed rule.

The Union has consistently argued that it is not sufficient to make a determination regarding minimum velocity of air allowed to be coursed through the conveyor belt entry without *also* looking at what maximum should be placed on it. This determination is essential to assuring the integrity of the entire mine ventilation system. The Union cannot stress the importance of this enough. Higher velocities of air will cause more respirable dust to be coursed to the face areas, where miners will be working. Greater velocity also possess a greater threat that smoldering coal or other materials will become an uncontrollable fire in a significantly shorter period of time than if the velocities are at lower levels. The velocity of air in the belt entry must be maintained at the lowest possible level, and the only practical way to assure this would be to withdraw the proposed rule and continue to rely on the 101(c) process instead.

The location of sensors in the belt entry is uncertain based on the Agency's writing of the proposed rule. The Committee stated that sensors should be located at not further than 1,000 foot intervals in the belt entry. However, the proposed rule leaves that requirement up to interpretation. The Agency has stated, "If the belt drive, take-up and/or tailpiece are installed together in the same air course they *may* be monitored with one sensor located not more than 100 feet downwind of the last component..." The Union must ask if the Agency's intent is to allow a single sensor to be viewed as adequate protection where the belt is in a single split of air (as it would have to be) without regard to the length of belt in question. If so, the language is vague and could allow several conveyor belts from the section to be monitored with a single sensor if they are on the same air split. This is an extremely dangerous proposal and is certainly not within the intent of the Advisory Committee. The Agency must immediately take steps, in the rule, to eliminate this danger.

Miners and their representatives expressed their views on this matter during

the public comment period. They expressed the following concerns:

Butch Oldham:

MR. SEXAUER:

“Excuse me, just so I understand this correctly. The Ohio 11 mine there was belt fire, was that before or after you had a petition in place?”

MR. OLDHAM:

It was during. They had a petition in place at the time.

MR. SEXAUER:

Okay.

MR. OLDHAM, May 1, 2003, Lexington, KY, pp. 33-34:

That’s what I’m going to speak on because it was just right out by a header. And during that fire, the sensor and the header never picked it up because we had common entries with the belt entry and had fresh air coming in from the roadway into the header and the sensor was hanging on a post, on the backside of a post. It never picked up the fire. The sensor a thousand feet away picked it up. So you know, there was no requirement in that petition that said where you had to put it, if a smoke test had to be done to determine the direction of the air or exactly where to put it. And everybody felt so comfortable that the CO sensor was so great that they could just hang it on a post and it would pick it up, but it didn’t. After the fire, and we could get in there, we moved that sensor two feet, pick it up -- it was hanging off the post, moved it two feet and it started picking it up. So that’s how critical sensor location is.”

Dwight Cagle, April 29, 2003, Birmingham, AL, p. 51:

“My name’s Dwight Cagle, I work for Jim Walter Resources Number 7 Mines. I’m the Safety Committee for the UMWA. The first thing I want to touch on is about some smoldering fires that we’ve had at our mines. Just in the last few months, we’ve had several fires on our belt lines, that the CO detector did not pick up. Some of these smoldering fires, I’ve found myself, that probably has burned six to eight hours. You know, the only way you can find them is the smell, which they’ll eventually be into a large fire.”

“Repairmen, belt sweepers, this proposed rule would allow the belt air to pass

through these belt entries where the belt is not operating, on the idle section, where the miners are doing maintenance, bed work, without being monitored. These areas need to be monitored around the clock and examined and put in the book, whether they're running or not."

"Sensor locations, these sensors should be located in areas of the airflow, staggered locations around headers. We have different types of headers that will almost block an intersection and divert the air just like a regulator. Both sides of a point feed should be monitored with sensors, power centers should be monitored, should be examined and recorded. All common entries should be monitored also. Nothing was mentioned about a battery backup on these CO systems too. Right now we have a backup system that would last at least five hours. This also should be in the new rule."

"The location of those sensors needs to be different places, placed around, especially at headers, at takeups. And the slippage should be monitored. Like I said, I've been in two of those fires on belt slippage. If it don't shut off, it'll burn the belt in two and the material our belt is made out of, will it pick it up? I've been told it wouldn't. Once the coal dust and all gets in it, it'll pick it up."

The determination of a "responsible person" has received a great deal of attention recently. Unfortunately the Agency has apparently not taken the concerns raised in that debate seriously. The Union is convinced specialized training regarding the monitoring system in place at the mine is essential for someone to be considered responsible for its operation. The lives of every miner at the operation hinges on the individual being acutely aware of not only how and why the system functions as it does, but what precise steps are necessary when the system alerts them of a problem.

The Agency has once again made a determination that routine training is sufficient to insure compliance. The Union would argue that the standard set to meet compliance for this task must be raised. Miners need to be certain that the responsible person in "knowledgeable, reliable and qualified." The Agency must raise the threshold for the responsible person if it is serious about protecting miners' health and safety.

Miners have routinely complained that the Agency does not specify sufficient requirements that an individual must meet before being considered responsible to perform certain important functions. Miners' lives depend on adequately trained persons performing in a professional manner. Here are some comments on the subject from the last round of public comments:

Gary Trout, April 8, 2003, Charleston, WV, p. 27-29:

“On the responsible person the Advisory Committee recommended that at all times the miners are underground, a reasonable person should be an on duty on the surface so that the alert and the alarm signals can be seen or heard, maintain a record of each alert and alarm signal and the actions taken. I think that record needs to be kept in a place where the system is. We’ve got in industry today, we’ve got a lot of folks that are doing this that are contractors. They don’t even have miner certificates. Some of them have never been in a mine. I think we need to look and set down regulations which stipulate the qualifications for these people. I mean, we’ve got people right now, who are looking at them, that are that have never been in the mines. So when you have a responsible person, you know, the ideal situation in my opinion and a lot of larger mines, is like the dispatchers. He knows where everybody is in that mine. Each piece of equipment that’s moving in that mine, that’s on that track, he knows where at. He knows where people can get off the track, he knows where they are that particular day. He knows the proper way to get of people in the section and if you had all those systems incorporated in one place, it’d be much easier for the person, whoever is designated responsible person on that surface, to take control of the situation and quickly and efficiently get those folks out from underground.”

The recommendation to include certain information with regard to the AMS in the fire fighting and evacuation plan is not good enough to protect miners. Recent events have demonstrated many of these plans are antiquated and in need of overhaul, even before MSHA would add additional information or requirements to them. The Union urges the Agency to immediately begin the process of reviewing and updating the fire fighting and evacuation plans at all mining operations to insure they meet the challenges already placed on them in today’s industry. Only then should the Agency revisit the proposition of adding any additional material into these plans. Short of such action on the part of the Agency, incorporation of more information and requirements will be counter-productive and will effect a diminution to miners’ safety.

The Union is also convinced MSHA’s determination that the need to have management review and initial the data recorded by the AMS is a mistake. The UMWA is not certain how MSHA concluded that, “...since the AMS log is available for review by miners and authorized representatives of the Secretary, that the mine operator will also review the AMS log data.”

In the preamble for the proposed rule MSHA notes it will not be adopting Item 13 as recommended by the Advisory Committee. It specifically identified slippage switch monitoring and asked for comments on that subject. However, it fails to note that with the decision it is also omitting the use of smoke detectors as recommended by the Advisory Committee. The Union does not believe this to be an oversight, but rather a deliberate attempt to eliminate a portion of the

recommendation without offering a valid reason. The Union supports the use of CO monitors and smoke detectors in the conveyor belt entry and asks MSHA to address and fix this issue.

The Union disagrees with the Advisory Committee and the Agency regarding the assignment of alert and alarm levels. The Union takes this position because the proposed rule fails to offer a standard method for determining the ambient level at the mine. Without such a standard the Union cannot be certain levels specified by any particular operator are accurate.

The UMWA presented the following comments regarding alert and alarm levels:

*Gary Trout, April 8, 2003, Charleston, WV, pp. 25-27:*

"Item four, it says sectional alarms advisory committee recommends, the proposed rule would not require automatic section alarm activations during alert conditions, but rather only during alarm conditions. MSHA believes that the frequency of the alert signals could lead to complacency among miners. I think that here, that any time there's an alert on a section belt and you've got maybe a suspicion of a fire or a belt fire or some type of smoke coming up your belt line, the people in the sections need to know about it . They need to be alert, they need to be withdrawn at that point in time, back below that particular sensor and then, investigate it to see what it is. If you have an alarm, then they need to be evacuated. Some people think they need to go back to the next foot of air. I think we need to take precautions here, when you hear this, it's going to be a part of the law, and withdrawn from the mines to investigate the alarms to see what the problem is. People need to be alert. I don't think they're getting complacent because you have various people who monitor these systems and they see the alerts go off and when they do, they know they have - they have certain procedures they have to do. I don't think they get complacent in it . I think the more alert we are - - - . an alert goes off and we know that we're going to have to evacuate, we need to be making preparations right then. I think we need to alert the sections immediately if they have an alert."

*Randy Clements, April 29, 2003, Birmingham, AL, pp. 63-65:*

"On the alarm system on the sections it calls for audible and visual alarms. As an experienced ram car operator, I can tell you that when you pull up to a feeder to dump a load of coal you cannot hear the alarm going off. It is not loud enough. There ought to be some type of requirement that it give off enough signal that a ram car operator -- you're sitting there on a ram car fully loaded, you having to rev your engine up to 1,800RPMs in order to increase the hydraulics to push the coal out. You're also wearing earmuffs; you've also got your feeder running with a crusher

going. You cannot hear the audible alarm going off. Very seldom can you even see the light until you fully dump your load and you start pulling off and you have to look back. They also should be on the section an audible and visual alarm at the power center. If the crew happens to be eating their lunch, there's nobody over there, there's nobody passing through that area that could see the alarm; therefore, it could be seen on either side of the section if you were running a dual split system or a single split, either one."

"Another problem that I see with this new law is communications. I think we've all touched on communications -- on two-way communications. Some of the problems that I've seen at Jim Walters Number 5 Mine that we've had, the CO technician telling the responsible person on the surface that he's going to calibrate a certain sensor on the section. Before he gets up there the alarm goes off, the section calls. They say hey, he's calibrating. The CO man gets up there, he says hey, I'm fixing to calibrate. In reality, we had this motor on the beltline, the CO man thought it was calibrated. That's why it's important that the CO technician immediately prior to him putting the gas to that sensor, or calibrating, notified the CO that I'm calibrating and when he gets done I'm through calibrating. We've had that happen on several occasions in our mines."

"The new law should also require -- or we should look into a man bus should be left on the sections for transportation when the CO alarm is going off. If you have CO alarms going off 2,000 feet or 3,000 feet out by your section, you're having to walk out. You have no idea what's going -- you know, what you're walking into in that period of time it's took for that thing to set there and burn. If you had a man bus, it's a quick retreat out. That's the main thing, the safety of the people."

"Again, I would like to talk about -- it really concerns me on the -- when the mine is idle and not having an AMS system. That is a -- I cannot believe that we would even consider -- since that is a safety people -- safety system for miners underground, that we would even consider having it not be operable when the mine is idle. There's still people working underground. It's a good system if it's maintained properly."

"One thing I would like to touch on a little bit too is during the explosion of the Number 5 Mine, I wish we could come **up** with some type of design of the AMS system that would withstand some type of explosion. As y'all probably -- y'all are aware, you know, that was a severe explosion we had at our mine. I don't know if you can design anything that will withstand that explosion. But the first explosion we had, the CO did go into communication failure. It was improper action by the responsible person on the surface, but it did indicate some problems. There was no action taken. It is a good system, but allowing it to be turned off under idle status I think is an injustice to the miners that works underground. "



Butch Oldham, May 1, 2003, Lexington, KY, p. 32:

“If an alarm occurs at shift change, it was in their petition no one was permitted in the mine except qualified persons designated to investigate the source of the alarm. Also, in the proposed rule, the designated surface location, an AMS operator. And I know it allows the AMS operator to designate a surface location at the mine. What was a little bit of a concern to me in the proposed rule, you’ve got “or another location.” We don’t know where that location is. Could that be off mine property in another city? You know, we find that’s a problem because then if you have a mine fire, have a storm or something, phone lines -- that’s what we’re relying on is the phone system to contact those people --and you have the mine fire in a mine and that person can’t warn them, you know, they need to be at that mine. That location needs to be at the mine where they’re monitoring those systems.”

The UMWA agrees with MSHA’s final sentence in this section: “The issue must be addressed on a mine-by-mine basis as conditions warrant.” The UMWA is convinced this should be the rule with regard to the use of belt air to ventilate working places in its entirety. Conditions at each mine do not lend themselves to a rule such as this. The attempt to place a one-size-fits-all solution with regard to this issue is ill-advised. The use of any method, other than a mine-by-mine determination regarding the use of belt air and what specific safety needs are necessary when it is used, *will* reduce safety protections for miners.

The recommendation of the Committee and agreement by the Agency to maximum and minimum air velocities on page 3944 of the Federal Register Vol. 68 No. 17 is not germane to this issue. The Union is unaware of any argument *against* sufficient air being coursed into the conveyor belt entry to adequately control methane and dust levels in the belt entries. The use of belt air to ventilate the working places should not have any affect on this requirement.

The decision not to require lifelines in the primary and alternate escapeway for the reasons cited by the Agency is ill-advised. The assertion that lifelines are quickly destroyed during mining and not a priority for repair is a consequence of MSHA enforcement activity. Roof bolts are routinely destroyed during the mining process, but are replaced immediately in the next bolting cycle. Using the Agency’s logic here would lead one to believe roof bolts may not be important either because they are easily and routinely damaged. Many operations are currently required to install and maintain lifeline as part of the mines PDO. MSHA’s decision would eliminate that protection and erode safety protections for these miners.

The Union presented testimony regarding the need to have lifelines on working sections to aid in escape:

Dwight Cagle, April 29, 2003, Birmingham, AL, pp. 53-54:

“Also at the Nebo Mines, which was another Jim Walter Mines, we had an explosion on the section and the only way we got out to fresh air, we crawled and felt the reels out. You can’t

see during this. A lifeline should be required. Cost -- real inexpensive, a roller and nylon rope would be sufficient. That's what we had at the Beckley academy."

Larry Kuharcik, April 10, 2003, Washington, PA, pp. 51-52:

"The life lines, coming from a West Virginia coal mine, the review decided that this was not needed, the life line. Well, in the State of West Virginia, the state law, any time you use a return air course as an intake escapeway, which we do in our coal mine, we are required to maintain a life line. The review said that because of the maintenance and the mining destroying them, they didn't recommend it. We have no problem with it. The law requires us to keep it up to the last open cross cut, be made of a durable material, plus reflection tape every 25 feet for the life line. We've been using them for several years at the Blacksville mine and we have no problems with the life lines, and we would like to see the life lines as a mandatory recommendation for all coal mines. There's no problem with the life line. Gentlemen, that's basically what I wanted to talk to you today about, but I want to leave you with one question because I'm confused with my government. Since 911 we created Homeland Security, which my ex-governor is ahead of, and I believe everybody in this room will agree that our No. 1 priority is to protect American citizens from either harm or death. Yet, I go down the road to Mr. Lauriski, Department of Labor and we come up with these kind of reviews, which the United Mine Workers and myself doesn't full agree with the advisory committee. But we do agree with a lot of what they say, yet, I read through here and so many things the advisory committee recommended was neglected, wasn't added into the final review. Now I would like to think that my job and your job and all our jobs is to provide the safest and best for the American people within. We have the knowledge. We have the power. The main thing is we have the power to provide, to protect our own such as the Homeland Security. Every man and woman, thousands of coal miners, men and women in the mine, to give them the most protection. I think it's our responsibility, mine and yours, to make sure they get that by including a lot of the recommendations from the advisory committee. I think you would agree with me that should be our No. 1 priority, and I would like to see a lot of the recommendations put into this review that has not been put into the review. Thank you, gentleman. That's all I have to say."

The Union cannot find fault with the decision by MSHA *not* to require the intake escapeway to be maintained at a higher pressure than an adjacent air course. Such pressure is needed for the integrity of the mine atmosphere and for miners to have a source of fresh air in the event of a fire or other event that requires them to evacuate the mine. MSHA has correctly cited that, "...it may be difficult to maintain the pressure differential in the proper direction." However, that difficulty does not justify *abandoning* the requirement. Permitting the Agency to make determinations on which sections of the mine Act to enforce based, on how "difficult" they may be, could have a catastrophic impact on miners' health and safety. To protect miners, the rule must require higher pressure to be maintained in the escapeway than is on the adjacent air course.

The following comments regarding relative air pressures was submitted by the UMWA:

Butch Oldham, May 1, 2003, Lexington, KY, pp. 30, 34:

“The primary intake escape entry had to be maintained at a higher pressure over any other entry that was common with it, I mean, the other entries, the neutral entries and the belt entry. And in that petition it had to be at least 10 percent higher in the primary intake escapeway to keep it pressurized so we wouldn’t get smoke or hopefully wouldn’t get smoke into the primary intake escape. Also, it’s stated in our petition that the intake escape entries had to be maintained free of fire hazards, you know, to the extent practical.”

“And also, in the Ohio 11 petition, the operator was required at all time in the sections of the mine to maintain a higher air pressure in its primary intake escapeways over that maintained and adjacent entries. And at Ohio 11, we had 150-footper minute ceiling on the air flow levels in the belt entry in working sections. So 150-footper minute was all they were allowed to have in that petition on the sections. Primary escapeways shall be protected during mine layout and design and areas of the mine developed after the effective date of the petition, the system shall be designed such that an air course containment of air, the conveyor belt, carries less than half of the air for section ventilation. And to the extent practical, the pressure differential shall be maintained from the primary escapeway to the belt entry. So even in that recent petition, they’ve seen that, you know, we’ve got to maintain our primary intake escapeway as smoke-free as possible. What I’d like to say is, how can the agency pass a rule that eliminates all the protections that miners presently have in their petitions that were negotiated between the miners, the miner’s reps and the mining companies? This rule does not guarantee the same protections that currently exist and it doesn’t allow for mine-specific situations that exist at their mining operations. I don’t believe this is what Congress intended when it created the Mine Act and this rule lessens the benefits miners currently enjoy. This rule is not in the best interest of working miners and should be repealed.”

Once again, the UMWA agrees with that portion of MSHA’s logic that states issues “...must be dealt with on a mine-by-mine basis...” This is consistent with the current use of belt entries. The proposed rule must be withdrawn and the Agency should still follow the 101(c) process with regard to allowing the belt entry to be used as an intake for ventilating active working areas of the mine.

The UMWA suggest the following proposed petition( to allow ai coursed through conveyor belt entries to be used to ventilate working places), conditione upon compliance with the following terms and conditions, could serve as a minimum guideline for MSHA to adjust as may be appropriate, on a mine-by-mine basis. . The differing conditions at each operation may

require additional protections. This is consistent with the intent of Congress under 101(c) and in the Union's view the only appropriate means to address all the issues that affect miners' health and safety when using air from belt entries.

1. An early warning fire detection system (Carbon monoxide monitoring system and smoke detectors) shall be installed as follows:
  - (a) The carbon monoxide monitoring system shall be installed in all belt entries utilized to course intake air to a working place.
  - (b) Sensors shall be installed near the center and in the upper third of the belt entry in a location that would not expose personnel working on the system to unsafe situations. Sensors shall not be located in intersections, abnormally high areas or in other areas where airflow patterns do not permit products of combustion to be carried to the sensors. Sensors shall be installed in such a manner so as not to be obstructed by any roof support material or stationary machinery and, to the extent possible, be in the direct flow of the air passing over them.
  - (c) Sensors shall be installed between 50 and 100 feet downwind of each belt drive, drive/belt storage unit combination, at each side-dump location, and up to 50 feet downwind of each tailpiece at a location to prevent damage from mobile equipment, and at intervals not to exceed 1,000 feet along each conveyor belt entry.
  - (d) Sensors shall be installed not more than 100 feet downwind of all electrical installations and any equipment or location in the conveyor belt entry where a potential fire source exists. Electrical installations consisting of multiple pieces of equipment may be monitored by a single sensor not more than 100 feet downwind from the electrical installation (measured from the furthest point of the installation also in a downwind direction) provided the sensor is located where CO from a fire will be detected.
2. The early warning fire detection system shall be designed and maintained as follows:
  - (a) The carbon monoxide monitoring system shall be capable of providing both visual and audible signals. A visual or audible alert signal shall be activated when the carbon monoxide level at any sensor reaches the level determined in condition 4. An audible and visual alarm signal distinguishable from the alert signal shall be activated when the carbon monoxide level at any sensor reaches the alarm level determined in condition 4.

- (b) Audible and visual alarm devices used on the sections shall be of the permissible type if installed in areas where permissible equipment is required. Alarm devices shall give visual and audible signals that can be seen and heard on the working sections and at a location on the surface of the mine where a responsible person(s) is on duty at all times when miners are underground. Alert devices shall give visual and audible signals that can be seen or heard by the responsible person(s) at such surface location.
- (c) The carbon monoxide monitoring system shall activate alert and alarm signals at the working section(s) and at a location on the surface of the mine where a responsible person(s) is on duty at all times when miners are underground.
- (d) Sensors located from the mouth of the section to the section loading point shall activate section alarms if the alarm level is reached. During the initial development of a section, all sensors for a distance of 4,000 feet outby (into the direction of airflow) the section loading point shall activate the section alarm if carbon monoxide reaches the established alarm levels. The 4,000 feet distance outby the mouth of the panel may be decreased proportionately as the section advances to a total of 4,000 or more feet; at such time, the sensors outby the mouth of the panel shall not be required to activate the section alarm.
- (e) The carbon monoxide monitoring system shall be capable of monitoring electrical continuity and detecting electrical malfunctions such as open-circuits, short-circuits, and ground-faults in the system.
- (f) The carbon monoxide monitoring system shall be capable of identifying any activated sensor(s).
- (g) The carbon monoxide monitoring system shall be capable of giving warning of a fire for a minimum of 4 hours after the source of power to the belt is removed as required by 30 CFR 75.1103-4(e). When power is removed due to fan(s) stoppage, the carbon monoxide monitoring system shall be de-energized if not intrinsically safe as required by 30 CFR 75.313(e).
- (h) The carbon monoxide monitoring system shall limit time delay periods to not more than a total of 180 seconds for the alert and alarm. If used, time delays shall be specified in the mine ventilation plan. Time delays shall only be used in mines using diesel equipment.
- (i) The CO monitoring system shall be equipped with a battery back-up or other comparable system that will automatically energize the system in the

event of a power failure.

3. Velocity in the belt conveyor entry.

- (a) The air in the belt conveyor entry shall have a velocity of at least 50 feet a minute and have a definite and distinct movement in the designated direction. The belt conveyor entry shall be limited to the minimum amount necessary to ventilate the belt entry.
- (b) Measurements to obtain the average air velocity in a conveyor belt entry shall be taken at three or more locations which are representative of the cross sectional areas found throughout the entry and not at locations where the entry is abnormally high (e.g. belt drives) or low (e.g. under overcasts).
- (c) Requests for higher air velocities may be submitted to the District Manager by the Operator only for specific health, safety, or compliance needs (e.g. dust control, methane, maintaining adequate air quantities or velocities, etc.). Prior to submitting a request to the MSHA District Manager for a higher air velocity, the Operator shall provide a copy of such request to the members of the United Mine Workers of America Local Union Health and Safety Committee (Safety Committee) and shall meet with the Safety Committee to review and discuss the request. The Safety Committee shall have the opportunity to submit comments to the MSHA District Manager for consideration during the review of a request for higher air velocities. Upon request, the Safety Committee and/or the Operator may meet with the MSHA District Manager regarding the request for higher air velocity. A separate request for a higher air velocity shall be submitted for each specific conveyor belt entry for which a higher air velocity is being requested. The maximum air velocity for each conveyor belt entry shall be approved in the mine ventilation plan.
- (d) Because of the increased velocity of air being coursed through the belt entry and the inherent dangers that are created by such velocities as regiment for routine belt cleaning, belt maintenance and rock dusting. This regiment must be done in its entirety on a regularly scheduled basis.

4. Determination of the carbon monoxide alert, alarm, and ambient levels in the conveyor belt entry.

- (a) The alert setting for the mine shall be 3.0 ppm above the ambient level for the mine. The alarm setting for the mine shall be 8.0 ppm above the established ambient level for the mine.

The Operator may request a higher velocity in the conveyor belt entry. Such request to the district Manager shall propose the increased air velocity and request a 90 day test at the increased velocity and shall outline the testing procedures to be performed. The Operator shall conduct each 90 day test in cooperation with the Safety Committee. The Operator shall meet with the Safety Committee prior to the start of any 90-day test to review and discuss the test parameters. The District Manager may allow the test to proceed using the increased air velocity. The test procedure contemplates the testing of alert and alarm levels lower than 2.5 ppm and 8.0 ppm. However, the alert and alarm settings for the CO monitoring system shall be maintained at 3.0 ppm and 8.0 ppm respectively above the ambient level while the testing is being performed and data is being compiled. If before the end of the 90-day period, the test results appear to provide a definitive result, the Operator may end the testing at such point. At intervals not exceeding once every 30 days, during each test, and upon completion of the test, the Operator shall meet with the Safety Committee to review and discuss the test results. The Operator shall provide copies of all test data to the Safety Committee. At the end of each test, the Operator shall present to the District Manager the results of the testing, data collected to support the conclusions reached and the proposed alert and alarm settings. The Safety Committee shall be permitted to be present when the Operator presents this information to the District Manager. The purpose of the testing is to reduce the alert and alarm settings to the lowest attainable levels; however, the settings cannot exceed the levels established in 4(a). If the results of the testing indicates lower settings, the levels shall be presented for incorporation within the approved ventilation plan.

(2) The carbon monoxide alert and alarm level can be different for various areas in the mine. For example, settings in the main conveyor belt entries could be lower than settings in mechanized mining sections due to larger air quantities. The number of carbon monoxide alert and alarm settings shall be minimized and may be limited by the District Manager to maintain system effectiveness.

(3) Alert and alarm settings can also be different for development, retreat, longwall set-up and longwall removal.

(b) The ambient level for use in determining alert and alarm settings for compliance with section 4.(a) shall be 2 ppm upon the issuance of the Decision and Order. The Operator may request different ambient levels for the mine or for distinct portions of the mine. Requests for different ambient levels shall be submitted to the MSHA District Manager for verification and included in the mine ventilation plan. Prior to submitting a

request to the MSHA District Manager for a different ambient level, the Operator shall provide a copy of such request to the members of the United Mine Workers of America Local Union Health and Safety Committee (Safety Committee) and shall meet with the Safety Committee to review and discuss the request. When a request for a different ambient level is requested, the ambient level shall be determined under normal mining conditions as follows:

(1) A properly calibrated carbon monoxide sensor(s) shall be used for an ambient determination. Measurements from all sensors in the conveyor belt entry shall be used to determine the ambient level for each separate conveyor belt airsplit. Continuous readings shall be taken and recorded for a total of five (5) production shifts to establish a mine history of carbon monoxide levels. The average of the data collected for each separate conveyor airsplit will determine its ambient level.

(2) Ambient levels shall be representative of normal operating conditions. Diesel equipment shall not be unnecessarily idled in the air split where the ambient level is being determined.

(c) The cross-sectional areas where velocity readings are taken which are used for alert and alarm level determination shall be measured at locations in the entry representative of the cross-sectional areas found throughout the entry and not at locations where the entry is abnormally high (i.e. belt drives) or low (i.e. under overcasts). For belt entries that are common with other entries, the sum of cross-sectional areas for belt entries and the common entries shall be used.

5. The carbon monoxide alert and alarm levels and the ambient level(s) determined in condition 4 shall be submitted to the District Manager for verification and shall be included in the mine ventilation plan. The District Manager is authorized to require reevaluation of alert, alarm, and ambient levels if conditions change. If changes in conditions affect the alert, alarm or ambient level, the mine ventilation plan shall be revised to reflect such changes.
6. When the carbon monoxide monitoring system gives a visual and audible alert signal, all miners in the working sections on the same split of air shall be notified immediately and an investigation shall be conducted to determine the cause of the actuation. The carbon monoxide monitoring system shall also activate a visual alert signal on the affected working section(s). When the carbon monoxide system gives an audible and visual alarm signal, all miners in the same split(s) of air shall be withdrawn immediately to a safe location at least one sensor out by the sensor(s)



activating the alarm, unless the cause is known not to be a hazard to the miners. When the carbon monoxide warning system gives an audible and visual alarm signal at shift change, no one shall be permitted to enter the mine except qualified persons designated to investigate the source of the alarm. If miners are enroute underground, they shall be held at, or be withdrawn to, a safe location, at least one sensor outby the sensor(s) activating the alarm. When a determination is made as to the source of the alarm, and that the source of the alarm is known not to pose a hazard to miners, the miners shall be permitted underground. The mine evacuation plan required by 30 CFR 75.1101-23(a) shall be revised to specify the actions to be taken for alert and alarm signals. Such revisions shall be approved by the District Manager. A record of each unplanned alert and alarm signal given, and the action taken shall be maintained at the mine for a period of 1 year. This record shall be separate and not included with other records and shall be made available to authorized representatives of the Secretary and the representative(s) of the miners.

7. Personnel stationed at the surface location described in condition 2 shall have two-way communications with all working sections. When the established alert and alarm levels are reached, such persons shall notify all working sections and other locations where personnel are normally assigned to work (e.g. belt transfers). Personnel stationed at the surface location and the United Mine Workers of America Local Union Mine Health and Safety Committee shall be trained in the operation of the carbon monoxide monitoring system and in the proper procedures to follow in the event of an emergency or malfunction. In the event of an emergency or malfunction, the responsible person stationed at the established surface location shall take appropriate action immediately.
8. The carbon monoxide monitoring system shall be examined visually at least once each shift. The results of the examination(s) shall be recorded in the preshift examination record book(s) on the surface and made available to all interested parties. The monitoring system shall be inspected at intervals not exceeding seven (7) days to ensure that the system is operating properly. The monitoring sensors shall be calibrated with known concentrations of carbon monoxide and air mixtures at intervals not to exceed 31 calendar days. An inspection record shall be maintained on the surface and made available to all interested persons. The inspection record shall show the date and time of each weekly inspection and monthly calibration and all maintenance performed, whether at the time of the weekly inspection or otherwise.
9. Administrative controls shall be developed, establishing procedures for planning and communication of activities which are known to result in elevated carbon monoxide levels which do not present an immediate hazard to miners.
10. If at any time the carbon monoxide monitoring system or any portion of the system

required by this Proposed Decision and Order has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the miners in the affected working section are notified and the affected portion of the belt conveyor entry is continuously patrolled and monitored for carbon monoxide in the following manner until the affected monitoring system is returned to normal operation:

- (a) The patrolling and monitoring must be conducted by a person or persons trained in the mine evacuation plan, the operation of a handheld carbon monoxide detection device, use of the two-way communication device provided, and the following procedures:
    - (1) The trained person(s) performing monitoring shall be provided with a two-way communication device enabling the person(s) to communicate with the surface. The communications device provided to the trained persons shall be no less effective or reliable than the system presently in use at the mine;
    - (2) Each of these trained persons shall be provided with a hand-held carbon monoxide detection device. A carbon monoxide detection device shall also be available for use on each working section.
    - (3) If one sensor becomes inoperative, the trained person shall monitor at that sensor location;
    - (4) If two or more adjacent sensors become inoperative, a trained person shall patrol and monitor the area affected; and
    - (5) If the complete system becomes inoperative, a sufficient number of trained person(s) shall patrol and monitor the affected entries of the mine so that the affected entries will be traveled once each hour in their entirety.
  - (b) The procedure outlined above is applicable only for a short period of time that is to be determined by the reasonable amount of time required to repair or replace the equipment causing the malfunction. The mine operator shall begin corrective action immediately and continue until the defective equipment causing the malfunction is replaced or repaired. The responsible person on the surface shall immediately establish two-way communication with the working section(s) and notify them of the particular malfunction(s) or problem.
11. The details for the early warning fire detection system including, but not necessarily limited to, type of monitor, specific sensor location on the mine map, and the alert

and alarm levels shall be included as a part of the mine ventilation plan required by 30 CFR 75.370. The District Manager may require additional carbon monoxide sensors to be installed as part of said plan to ensure the safety of the miners.

12. The concentration of respirable dust in the intake air coursed through a belt conveyor haulage way shall not exceed  $1.0 \text{ mg/m}^3$ . Compliance with this requirement will be determined by establishing a designated area (DA) sampling location within 15 feet outby the working section belt tailpiece and sampled in accordance with 30 CFR 70.208. The specific DA sampling location shall be identified in the mine ventilation plan with a four-digit number beginning with 8, followed by the middle two digits of the MMU number, and ending with 9 (i.e., 811-9 for MMU 011-0).
13. A new conveyor-belt flammability test has been developed by MSHA. When compatible belting identified by MSHA as having passed the new flame-resistant test becomes commercially available, all subsequent belt purchases shall be of this improved type belting.
14. Maintaining the integrity of the primary intake escapeway is of the highest priority. Every effort shall be made to maintain the conveyor belt entry at the lowest pressure of all other intake air courses.

The integrity of the atmosphere in the primary escapeway shall be protected during mine layout and design. The mine design, as depicted in a 10 year plan for the Operator, and the three entry longwall development design that is presently being used, shall be considered as adequate mine layout and design in accordance with provisions of this section. Factors such as location of the primary escapeway with respect to the belt and return air courses, the number of entries within each air course, and the projected ventilating air quantities and pressures shall be considered. In areas of the mine developed after the effective date of the Decision and Order, the system shall be designed so that the pressure differential shall be maintained from the primary escapeway to the belt entry air course, to the extent practical. Wherever the pressure differential is from the belt entry air course to the primary escapeway, special care shall be taken to minimize leakage. This shall include the repair and sealing of ventilation controls as needed. The design of the system shall be specified in the mine ventilation plan.

15. The permanent stopping separating the conveyor belt entries from the intake escapeway shall be specifically approved in the Ventilation Plan for the mine. Stoppings shall be constructed using solid core concrete so as to minimize leakage provide strength and to the greatest extent possible eliminate burn through in case of a fore in the belt entry. The use of Kennedy stoppings shall be eliminated.

16. Before belt haulage entries are used to ventilate working places, miners shall be trained in proper evacuation procedures, including instruction and drills in evacuation and instruction in precautions to be taken for escape through smoke.
17. Prior to implementing the alternative method, the early warning fire detection system shall be inspected by MSHA and be fully operational and in compliance with the terms and conditions of this Decision and Order.
18. Lifelines shall be installed from the working section outby to point of escape. In the event lifelines are damaged they shall be immediately repaired.
19. Within 60 days after the Decision and Order becomes final, the Petitioner shall submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions shall specify initial and refresher training regarding compliance with the conditions specified by the Decision and Order.

In conclusion, the Union refers to questions posed at one of the recent public hearings regarding belt air usage.

Mr. Marvin W. Nichols, the Director of the Office of Standards Regulations and Variances, asked questions such as: "Can anyone give us an example of a major problem using belt air?" and "Give me an example of anyone ever being harmed by the use of belt air to ventilate working faces."

Our answer was an emphatic *yes* as stated by comments placed in the record.

Thirteen miners were killed by the explosions that occurred in Jim Walter Resources Number 5 Mine in Brookwood, Alabama, on September 23, 2001. This was at least partly a result of JWR being able to use belt air to ventilate the working faces at the mine under a Petition to Modify Safety Standard 30 CFR 75.326 issued June 9, 1980. This Petition to Modify Ventilation Safety Standards was approved when JWR No. 5 was using a six-entry room and pillar mining system. JWR has subsequently used this variance in the ventilation safety standards to reduce the number of mine entries to four, using the track entry and the belt entry as the primary intake air courses and the two outside entries as returns. During the intervening twenty-plus years, there is no indication that the approved Petition for Modification to use belt air to ventilate working faces was ever reviewed or questioned by either JWR or MSHA during the mandatory six-month reviews of the ventilation plans. Rather, the Petition for Modification to use belt air was routinely carried forward in the approved mine ventilation plans, even though the layout of the current mining system no longer resembles the mining system layout being used when the petition for modification was proposed by JWR and approved by MSHA on June 9, 1980. (See the old development works portion of mine map near the shaft bottom vs. current developmental sections in the Appendix H-Mine Map contained in the MSF A report of investigation of fatal underground coal mine explosions

September 23,2001, Jim Walter Mine No. 5, ID No. 01-01322; dated Dec. 11,2002.)

A roof fall on Sunday afternoon, September 23,2001, in entry number two, blocked ventilation to the face area of Four Section, resulting in a buildup of methane gas and the resulting fatal explosions. If the belt entry had remained a neutral split, as originally intended by the 1977 Mine Safety Act, there would have been at least one or two more intake air courses on Four Section on September 23,2001 and there would not have been a build-up of methane gas resulting in the explosions on four section as a result of the rock fall blocking the number two intake entry.

Also, of serious concern, the use of the belt air to ventilate the working faces of Four Section led to the buildup and accumulation of explosive coal dust and float coal dust in the number three belt air intake entry and number four return entry air courses that created the conditions for the massive dust explosions that were triggered by the methane gas explosions, and resulted in the death of thirteen miners and numerous injuries to other miners.

In addition, the AMS warning system did not work to protect the miners at the number five mine, even though the proposed belt air regulations assume a working warning system will always be in place. The AMS system has several obvious fatal flaws. The AMS system sensors and components are not 100% reliable and cannot be depended upon to indicate what is actually happening in the mine. The repeated failure of sensors at the number five mine created a cavalier attitude that any alarm was just another sensor malfunction that should be checked on later when a mine electrician could be dispatched to the site, sometimes hours later! Thus, when three sensors actually indicated a serious problem in Four Section on the afternoon of September 23,2001, no one took it seriously, resulting in the delayed evacuations of the mine and the unnecessary deaths of thirteen miners.

Also, the proposed rules do not address the fact that current mine communication systems do not reach all of the miners all of the time, even though the proposed regulation assume that to be the case. Thus there will always be miners who may not be contacted in case of an emergency created by the use of belt air to ventilate an active working mine. The proposed rules assume human infallibility by placing the safety of an entire mine in the hands of one person at an AMS monitor, even though such a system grievously failed the miners working at the number five mine on September 23,2001. Accordingly, AMS more monitoring sites and alarms should be required; we suggest a minimum of three surface sites and two sites underground within earshot of mine managers, mine foremen and miners working in the mine.

Experience also dictates the implementation of rules and regulations that require the design and operation of mine ventilation systems with redundant safety features to protect the lives of the miners in all circumstances. These rules are based on the false assumption that computerized monitoring systems operate perfectly all the time and that all mine owners, operators, managers and foremen are diligently on duty twenty-four hours a day, which is not the case as was painfully demonstrated at the number five mine on September 23,2001.

The sad fact is that the same belt air mine ventilation system that created the hazardous conditions that caused the disastrous gas and dust explosions in the number five mine still exist today. Serious questions still remain concerning the failure of the team of MSHA investigators to address the continued use of the outdated belt air petition at the number five mine that created the conditions for the September 23, 2001 disaster.