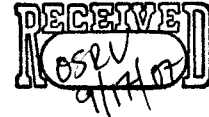


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September 17, 2007

Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington VA 22209-3939
Comments@msha.gov



RE: Comments regarding The Sealing of Abandoned Areas
Emergency Temporary Standard (RIN1219-AB52)

Cumberland Resources Corporation appreciates the opportunity to comment on the Emergency Temporary Standards (ETS) for Sealing of Abandoned Areas. The use of the emergency temporary standard by MSHA requires the compliance with such regulations prior to review and comment by the mining industry. MSHA has set a basis with the ETS from which change will be viewed by some critics as "backing down" from mine safety even though engineering and technological information may indicate that changes are needed to make the regulations effective and beneficial to mine safety. The "one size fits all" approach is not always the best way to approach and successfully achieve mine safety goals.

The objective of all involved (miners, companies, enforcement agencies, and lawmakers) should be legislation and regulations that provide a safe working environment in today's mines and not action taken without thorough investigation and input from all involved parties prior to the implementation of such legislation and regulation. What is the justification for a "grave danger" determination 16 months after the Sago explosion and with the July 2006 PIB in place containing many of the same requirements as the ETS? Sealing of abandoned areas has been brought to a halt twice; initially with the issuance of the July 2006 PIB and again in May of 2007 with the issuance of the ETS. Mine safety is a constant effort and the achievement of such is not aided by the constant changing and modification of regulations without review and comments by miner and companies who must apply and comply with those regulations daily.

Your consideration of these comments is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Harry D. Childress".

Harry D. Childress
Government Affairs Agent

1219-AB52-COMM-014

Comments on RIN1219-AB52

1. The standards that are required within the ETS for the design of seals should be clear, concise and easily understood. Seal designers have been told that a minimum safety factor of two (2) is required for all designs. This information is not addressed in the July 2006 PIB or in the ETS. Does this requirement mean that an approved 50psi seal is actually a 100psi seal and that a 120psi seal is actually a 240psi seal?? All requirements, assumptions, inputs, etc. used by Tech Support to evaluate seal design should be publicized for review and comment.
2. MSHA should not require mine operators to upgrade seals constructed prior to May 22, 2007 unless a imminent danger to health and safety exists. Making the requirements of this ETS retroactive would be dangerous and very expensive. Research and testing should be done to approve products that could be applied to pre-existing seals to upgrade their overpressure loading rating.
3. The final regulation should contain an allowance for a newly sealed area to pass through the 3-20% methane range with oxygen above 10% without having to withdraw miners or invoke the provisions of the action plan until the baseline for the sealed area is established. Additional sampling could be required by the district manager until the sealed area stabilizes at an inert level.
4. MSHA should not require existing seals to be removed and replaced with a higher strength seal due to several reasons such as; the practice would be dangerous and unsafe; many times there isn't sufficient room for a second seal; access for personnel equipment and material could be difficult; disruption of the ventilation system; cost of replacement. Any replacement requirements should be done on a case by case basis using information for each such case.
5. Sampling should only be required when a seal is outgassing. This sampling would result in a true indication of the atmosphere behind the seal. Some seals may only outgas occasionally but an operator should not be required to drill holes into the sealed area to check the atmosphere.

6. Once an operator has a history of an inert atmosphere consistently behind the seals being sampled with little or no variation, the district manager should be required to grant sampling at a frequency of greater than weekly.
7. The ETS has caused confusion with other regulations and responses from MSHA districts on the meaning of the term weekly. This ETS does not define the term weekly but makes reference in the preamble to checking the seals every 7 days. The term weekly has been defined in regulations related to permissibility checks. By allowing flexibility as to when the atmosphere behind the seals is checked, the examiner could ensure that the atmospheric pressure is such that the seals will be out gassing when checked. Requiring that the seals be made daily once the seal is found to be in gassing on the second weekly examination, is burdensome on the miner operator.
8. Section 75.335(b)(2) requires training of certified personnel in sampling procedures. The retraining should be done in conjunction with the training required for certified persons in 75.161(a) & (b). There is no reason to have additional retraining dates for duties that are performed on a weekly basis. This would simplify recordkeeping. Training could be required if the protocol is changed or modified.
9. Section 335(b)(4) assumes that an ignition and or explosion is imminent if +10% oxygen and 3-20% methane are present regardless if there is an ignition source present in the sealed area. Roof conditions, weather conditions, etc. should be considered before men are withdrawn or the area inerted. Additional sampling and/or monitoring could be required to determine whether this is a short term deviation or a persistent condition prior to withdrawal of personnel.
10. The sampling protocol should not address the specific brand of equipment to take samples behind the seals. The parameters should be addressed so that the mine operator would be allowed to use different brands or types of equipment that meet the parameters without having to obtain a plan change approval. This type of requirement will take man power away from on-site health and safety monitoring.

11. The establishment of a baseline should take into account that the oxygen may exceed 10% and the methane could be in the 3-20% range during that time and not require implementation of the action plan until the baseline is established or the trend reaches equilibrium. Additional sampling on monitoring could be required during that time.

12. Section 75.335(c) of the ETS prohibits welding, cutting or soldering within 150 feet of a seal. This is overly restrictive and does not take into consideration that these activities may take place in a separate airway that is separated from the seal by permanent ventilation controls. Some seals are located adjacent to intake airways in which non-permissible transportation and other types of equipment are operated. Does this provision prohibit operation of such equipment within 150 feet of a seal? This provision is overly restrictive and conflicts with practices currently permitted and needs to be rewritten to take those issues into account.

13. Two sampling tubes in each seal is overly burdensome and unnecessary. It is doubtful that this will provide additional useful information and could result in conflicting and confusing information. There should be no more than one sampling tube in any seal and it is not beneficial to have a sampling tube in each seal. The number and location of sampling tubes should be specified in the approved seal plan based on mine conditions.

14. Why is it necessary that four (4) individuals must certify that mine seals are constructed in accordance with the approved plan. This is overkill and could result in conflicting opinions on the construction of the seal. Sections 75.336(b)(2) requires certification by a professional engineer. Section 75.337(b)(4) and 337(b)(5) requires certification by a certified person who examines the seal. Section 75.336(b)(5) required that a mine foreman or equivalent mine official to review the record of the examining certified person and countersign such record. This provision would result in the mine foreman or equivalent mine official responsible for oversight of the seal installation as stated in the preamble. Section 75.337(c) requires a senior management official to certify that the construction, installation, and materials used to construct the seal were in accordance with the approved mine ventilation plan. This many requirements are

unnecessary and burdensome. If a company such as Minova, Micon, etc. is hired to provide the material and labor to construct the seals, would the personnel specified in the above referenced sections still be required to certify the construction and details of the seal?

15. Section 337(e) requires the mine operator to provide training to miners constructing or repairing seals. How can the mine operator train those manufacturer employees or contractors on how to construct or repair seals when those are the personnel the operator has hired to construct or repair the seals. The mine operator is not qualified to train employees of Minova or Micon in the construction of their respective seals. The operator would be able to provide those personnel with hazard training.

16. Under Section 338(a), the certification requires under 336(b)(1), 336(b)(2), and 337(c) must be retained for "as long as the seal is needed to serve the purpose for which it is built". I am not aware of any other requirements under 30 CFR Part 75 or Part 77 where the certifying person would be held liable or accountable for the initial certification for as long as the certified structure would be needed. This is an onerous burden for both the professional engineer and the senior mine official. A set duration for the retention of there certifying records needs to established in the final regulation.

17. Section 338(b) requires the records to be maintained at the mine site. After construction of the seal has been completed and quality control test results have been provided to MSHA, the seal construction certification records should be retained at a central location.

18. Under Section 338(c), the preamble requires the operator to allow access to seal records by "other interested parties". This term is not defined in the ETS and the ETS does not contain this requirement. It is recommended that the language of 338(c) be retained as written without the expansion in the preamble.