Kentucky Coal Association

Leadership for the Coal Industry

September 17, 2007

Patricia W. Silvey, Director
Office of Standards, Regulations, and Variances
MSHA
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939

RE: RIN 1219-AB52
Emergency Temporary Standard (ETS) on sealing of abandoned areas of underground coal mines published on May 22, 2007 (72 FR 28796).

VIA FAX: (202) 693-9441

Dear Ms. Silvey:

The Kentucky Coal Association would like to take this opportunity to comment on the Emergency Temporary Standard (ETS) on sealing of abandoned areas of underground coal mines published on May 22, 2007 (72 FR 28796).

The Kentucky Coal Association is comprised of surface and underground operators in both the eastern and western Kentucky coal fields. Our members mine a major portion of Kentucky's coal.

Please do not hesitate to contact me if you have any questions on our comments.

Sincerely,

Bill K. Caylor

Bill K. Caylor
President

Attachment

1219-AB52-COMM-013

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Comments on MSHA's May 22, 2007 proposed regulation on sealing of abandoned areas.

Why urgency and inflexibility? MSHA has set a basis with the ETS from which they will be unable to back down from even based on the engineering and technological comments they may receive. Why an ETS? What made a "grave danger" 16 months after Sago and with the July 2006 PIB in place with much the same requirements?

Ability to comment on seal design assumptions. Based on the power point presentation by Monty Heib, how can Tech Support require a 2 to 1 safety in the seal design with it not being required in the PIB or the ETS? All requirements, assumptions, inputs, etc. used by Tech Support to evaluate seal designs should be publicized for review and comment.

Replacement of existing seals. MSHA solicited comment in the preamble on the feasibility of requiring existing seals be removed and replaced. The final rule should not require the replacement of existing seals due to several reasons:

- It can be dangerous to replace seals. It increases the chance of getting someone hurt or killed.
- Many times there isn't sufficient space for a second seal.
- In many cases, there is only a walking path to get to seals, making it difficult to get materials to the seal area.
- You can not do a "one size fits all".
- The cost of such replacement is a factor.

The seals are currently required to be monitored and the atmosphere behind the seals to be inert as required by the ETS. Strengthening existing seals could be accomplished if a simple, cost-effective product were available. We understand the testing has been done on a substance but the results have not been released.

Removing miners during explosive range of methane behind seals. There is a need in the regulation for an allowance of 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 is established.

Sampling only during out-gassing. Only sample when the seal is out gassing to get a true indication of the atmosphere behind the seal. Some seal may only outgas occasionally but an operator should not be required to drill a hole in the sealed area to check the atmosphere.

Seal sampling variances. Once an operator has a history of an inert consistent inert atmosphere behind the seals with little or no variation, the DM should be required to grant sampling at a period than greater than weekly.

Definition of the term "weekly." There is confusion created by the ETS, other regulations, and responses from MSHA districts of the meaning of the term weekly. The seal ETS does not define the term but makes reference in the preamble to checking seals every 7 days. This needs to be cleared up and it would be best for the operator to have weekly defined as it is in the permissibility regulations.

Section 335(b)(2)---training and retraining. Section 335(b)(2) training and retraining should be done in conjunction with the training for certified persons required under Part 75. People do this weekly. Why add another training date when it can be coordinated with other training?

Part 75 Section 161(a)&(b)---additional training dates. Part 75 Section 161(a)&(b). There is no reason to have additional training dates required for duties that are carried out weekly. This would also simplify recording keeping.

Section 335(b)(4)---withdrawal of miners. 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 consideration before men are withdrawn or the area is inerted. This exact same condition could exist in an open gob with 12% oxygen and 4% methane and would not result in the withdrawal of personnel.

Section 335(b)(1)---alternative plan for ingassing. In 335(b)(1), MSHA requires an alternative plan to be developed and submitted to the District Manager when the seal simply won't outgas. In the preamble, MSHA states the alternative protocol may address various means such as the use of a borehole. MSHA should be cognizant that such boreholes could possibly cause a spark in the old workings; could serve as a future conductor for a lightening strike (lightening could follow a trickle of water down the borehole); or, could drill through abandoned works that has flooded, causing flooding of the lower seam being mined. Many alternatives suggested by MSHA are not feasible and they raise more questions than they resolve.

Section 335(b)---sampling question. In 335(b), MSHA should recognize a certain situation that could occur. Example: An area is sealed with two sets of seals. One set of seals is in the main return close to an exhausting fan and is outgassing. The other set of seals is located inby the main return and is ingassing most of the time. Can the seal that is outgassing be utilized to sample the sealed area?

Section 335(b)(5)---sampling equipment. 335(b)(5) the sampling protocol should not address the specific brand of equipment to take samples behind the seals. This would allow the operator to use a different brand or type of instrument without having to obtain a ventilation plan approval. MSHA should not force specific brands to be part of any plan; flexibility must be allowed.

Establishment of a baseline. Establishment of a baseline should take into consideration that the oxygen could 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.

Section 335(c)---prohibition of activities near seal. Section 335(c) prohibition of cutting, soldering or welding within 150 feet of a seal is unnecessarily restrictive. Belt drives, transportation equipment, track or other items could be located in separate airways and still be within 150 feet of a seal and be separated be permanent ventilation structures. These jobs are allowed in the areas referenced in the preamble under very controlled conditions. These activities are allowed during seal construction, you just can't do this after seal construction. MSHA should also recognize that a separate air course may be within 150 feet of a seal.

Section 335(d)---two sampling pipes in each seal. Section 335(d) two sampling pipes in each seal in a set are unnecessary. It is doubtful that this will provide much additional useful information and could result in conflicting and confusing information. There should be no more that 1 sampling tube in any seal and it is not beneficial to have a sampling tube in each seal. Preferably, sampling tubes should be specified in the plan. Sampling tubes should be at the high and low points, as is the current practice. Two sampling tubes at the same seal could yield inconsistent results. It may be better to specify in the plan the number of tubes and the extent the tube should extend.

Section 336(b)(2)---seal certification by professional engineer. The preamble is confusing as to what is to be submitted by the professional engineer. It indicates that the certification of the final construction of the seal is to be submitted with the other information approval to construct the seal. The preamble contradicts the language of the ETS.

Section 336(a)(2)(i)--- certification by professional engineer knowledgeable in structural engineering. The requirement that the professional engineer must be knowledgeable in structural engineering will cause problems. Engineers, like attorneys and physicians, are licensed to practice their profession, but their profession does not recognize certain practice areas. In other words, once one receives his professional license (physician, attorney, engineer), he can practice in any area. Professional ethics require him to ensure his own competency in the area he intends to practice.

Further, "structural" engineers may not be competent in mining engineering. There are many areas of underground mining where a "structural" engineer would not be competent to practice. So requiring the engineer to be knowledgeable in "structural" engineering is improper. The words "knowledgeable in structural engineering" should be deleted.

Section 336(b)(2)--- certification by professional engineer of the construction or oversight of seal installation. We feel the words "to conduct or have oversight of seal installation and" should be deleted. We oppose certification by the professional engineer of as-built seals. We base this on the following reasons:

- This would be difficult, expensive and is not necessary.

- There are many unknowns in the construction of seals, e.g., the concrete mix shipped to the mine and other materials used.
- What does "oversight" mean?
- You have double certification since MSHA is requiring someone from the company to certify construction.
- There are other areas in Part 75 addressing engineer certification. For example, in 30 CFR 77.216-5 addressing abandonment of slurry impoundments, it only requires a "registered professional engineer, knowledgeable in the principles of dam design and in the design and construction of the structure" to "certify that it substantially conforms to the approved design plan and specifications and that there are no apparent defects."

Section 337(e) training of trainers. Under Section 337(e), does the mine operator have to train personnel from Minova, Micon, etc. in the construction when they are the ones who train the mine personnel? We do recognize that these personnel need to have hazard training.

Section 338(c)---access to seal records. Under Section 338(c), the preamble requires the access to the seal records to "other interested parties". The ETS does not contain this requirement. We support the language as currently written and oppose any change.

Mitchell Barrett seals.

MSHA should allow the Mitchell-Barrett seals for the 50psi standard. The cost of installing the new approved seals will put a lot of smaller operators out of business and will force some to avoid sealing altogether, which will increase exposure to workers, supervisors, and inspectors in traveling extensive abandoned works that are not sealed. We understand the reason MSHA did not approve the Mitchell Barrett seal is that they are tested to 96psi which would be 48psi with the 2:1 safety factor not meeting the EXACT 50psi standard. We haven't heard that any of the explosions behind sealed areas that prompted the rule changes were because of a failure of the Mitchell Barrett seals---that they were from improperly constructed Omega Block seals only.

We fear there will be a backlog getting seals built from a "Qualified" contractor/vendor and everyone will be standing in line with Micon or Minova waiting on their turn to get them in to build the seals in a timely manner. With the Mitchell Barrett seals we can build them, certify the construction with engineers and mine supervisors, and they will and do work.