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COMMENTS OF
CHEVRON MINING INC.
(f/k/a The Pittsburg & Midway Coal Mining Co.)
TO THE
MINE SAFETY AND HEALTH ADMINISTRATION
ON THE
EMERGENCY TEMPORARY STANDARD
SEALING OF ABANDONED AREAS

September 15, 2007

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Regulatory Information Number (RIN 1219-AB52)

Chevron Mining inc. (f/k/a The Pittsburg & Midway Coal Mining Co.) (CMI) appreciates this opportunity to comment on the Emergency Temporary Standard (ETS) on Sealing of Abandoned Areas published May 22, 2007 in the Federal Register (Vo.72, No. 98 beginning at page 28796.)

CMI shares MSHA's objective to protect miners from the various hazards of underground mining, including the risk of explosions of methane gases in sealed areas. We support any initiatives by MSHA or the industry that will, in fact, enhance safety of our miners. However, we caution against imposing standards to address

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speculative or remote hazards when the new standards are likely to result in a significant diminution to safety.

For decades, abandoned areas in U.S. coal mines have been effectively sealed to eliminate exposure of inherent hazards to mine examiners, pumpers and other workers necessary to maintain the area. Sealing also facilitates optimization of mine ventilation in the active areas of the mine. If the Final Rule, like the ETS, places unnecessary burdens on mine operators without realistic improvements to miner's safety, some operators may choose not to seal. This would be a giant step backwards for the industry. In general, CMI believes that the focus of the ETS should be on seal design and seal installation techniques rather than on attempting to monitor and control the atmosphere inside the sealed area. The purpose of sealing is to isolate hazards associated with abandoned areas from the active areas of the mine. Attempting to reduce or eliminate whatever hazard there may be from methane in sealed areas through sampling, monitoring, controlling and mitigating it is not technologically or economically feasible.

CMI has the following specific concerns with the proposed regulations in the ETS.

§75,335(a)(2) & (3)

The proposed standard would require seals capable of withstanding 120 psi overpressure if the atmosphere is not monitored and is not maintained inert and if the conditions in (a)(3) (i) through (iii) are not present. The standard would require seals capable of withstanding pressures greater than 120 psi if conditions (i) through (iii) existed but the vent plan would have to provide for seals of sufficient strength to address the conditions.

Comment

The conditions listed in (i) through (iii) are very subjective and would be virtually impossible to determine. For example, the word "likely" qualifies each of the three conditions, making the evaluation highly subjective and therefore enforcement subject to the whim of each inspector. Further, condition (iii) - "other conditions are encountered" - is meaningless. Finally, the requirement of (iv) is highly subjective and would give a District Manager virtually unfettered discretion and no guidance in approving or rejecting a vent plan.

CMI proposes that 75.335(a) (2) & (3) be rewritten to require seals capable of withstanding overpressures of 120 psi but without any requirements for monitoring gases in the sealed areas or inerting those gases.

§75,335(b)

This proposed standard would require, among other things, that the operator adopt an action plan to be included in its approved ventilation plan that would address actions to take if gas samples indicated that the atmosphere was not "inert", as defined in that section. The Preamble, at page 28803, states that the action plan "must provide protection to miners equivalent to withdrawal under paragraph (b)(4)(ii)". Section (b)(4)(ii) requires that, if the samples indicate that the atmosphere is not "inert," the operator must either implement the action plan or withdraw all miners from the affected area.

Comment

Depending on the physical size and scope of the sealed area in question, it is not reasonable to assume that localized samples, regardless of whether they are at selected seal sites, all seal sites, or from surface originating boreholes, can establish the inert status of a particular area. Monitoring sealed atmospheres at seals or boreholes only offers a false security (or insecurity) that the entire atmosphere is inert. However, if monitoring of the sealed areas will be required, CMI would support the concept of the action plan but CMI has several concerns with specific requirements in this section.

- The Mine Act gives MSHA the authority to order withdrawal of miners from the mine, or an affected area of the mine, under certain circumstances. The only authority that could arguably be applicable here is under Section 107(a), which provides for a withdrawal order if there is an imminent danger. An imminent danger is a condition or practice that could reasonably be expected to cause death or serious injury before it can be abated. An atmosphere in a sealed area that is not "inert" would not, in and of itself, constitute an imminent danger, primarily because of the

very low likelihood of ignition. That there would be a very low risk of injury or death is borne out by the fact that there have been very few incidents of explosions in sealed areas in the nation's mines. Thus the proposed requirement of withdrawal of all miners from the affected area is arbitrary and capricious and exceeds MSHA's statutory authority. CMI proposes that the requirement be that the operator implement its action plan and have a reasonable time within which to "inert" the area.

- The requirement that all persons be withdrawn from the "affected area" is ambiguous. MSHA inspectors in some districts have taken the position that the entire mine is "affected" and ordered the withdrawal of all persons from the mine. Further, the requirement to withdraw all persons from the affected area is arbitrary and capricious.

- The Preamble's statement at page 28803 that the action plan must provide protection equivalent to withdrawal is unreasonable and contrary to the provisions for an action plan at all. Miners will always be exposed to greater mine hazards when they are underground than they would be above ground. Hence, no action plan could provide protection equivalent to withdrawal. The logical extension of the statement is that all underground coal mines should be shut down and the miners terminated. CMI submits that this statement in the Preamble should be deleted.

§75.335(c)

This proposed section would prohibit cutting, welding or soldering with an arc or flame within 150 feet of a seal.

Comment

CMI submits that the proposed restriction of 150 feet is an excessive distance and would likely result in a diminution of safety for the miners without an offsetting benefit. Cutting and welding are

often required on longwall equipment that may be within 150 feet of a seal. Prohibition of cutting and welding within 150 feet of a seal may cause severe difficulties in repairing heavy equipment in some mines where the next entry or two entries over from the seal contains a preexisting belt, belt drive, shop area, travel-way or track. There is no "grandfather clause" for these situations. If additional, new seals (as anticipated by the standard and being required in the new ETS plans) are to be built and there is not adequate space in front of existing seals, the new seals may be placed within the 150 feet of the existing areas listed above. The 150 foot restriction could require miners to disassemble and laboriously move heavy equipment in order to make any repairs requiring welding. This could result in significant injuries.

Further, §75.1106 provides fully adequate protection to miners during these operations by requiring, among other things, continuous methane monitoring, except perhaps when welding or cutting is done directly on a seal, as was apparently the case in the Darby mine explosion, or in very close proximity to a seal. Therefore, CMI proposes that the prohibition on cutting and welding be within 50 feet of a seal.

§75.336(b)(2)

This proposed section would require the operator to designate a professional engineer to conduct or have oversight of seal installation and certify that the provisions in the approved seal design had been addressed.

Comment

The term "have oversight of seal installation" is ambiguous. It could mean that the P.E. must be present during the construction process.

· If he doesn't have to be present, then its meaning is even more obscure.

1 If he must be present, whether he would have to be present the entire time is unclear. This requirement would be very burdensome because the construction could happen on any shift and even on several consecutive shifts

2 If he must be present at all, the requirement appears to be inconsistent with §75.337(b) that a “certified person” directly supervise the seal construction and repair.

CMI proposes that §75.336(b)(2) be revised to require that the P.E. certify that the approved seal design was appropriate for the mine conditions where the seal was to be constructed and that the certified person was instructed to follow the approved design.

§75.337(a)

This section would require that the mine operator remove insulated cables from the area to be sealed.

Comment

This requirement could at times result in a significant diminution to safety with only speculative benefit. In some cases, such as at CMI’s North River mine near Berry Alabama, areas to be sealed are very old and extensive. Mid-year 2008 the mining in the southern reserves of North River Mine will be completed. At this time the south mains will need to be sealed. Forty-four thousand feet (8.3 miles) of seven-entry mainline entries currently exist inby the projected seal location. There are about 470,000 feet of entry development (89 miles). These entries contain approximately: 56,000 feet of high-voltage cable, 88,000 feet of communication cable, 44,000 feet of fire sensor cable and thousands of feet of miscellaneous power and control cables for pumps, belt drives, etc. The high voltage and communications cables must remain operative until immediately prior to the final sealing process, because the mainline will be occupied by mine examiners and pumpers. Thus, removing 25 miles of high voltage and communication cables (necessary to maintain the safety of these miners) in a very short time-frame would be very difficult and dangerous.

Also, thousands of feet of inoperable cable exist in the inaccessible gate roads of twelve mined-out longwall panels. Removing these cables would be very laborious at best and could result in injuries from strains and sprains from bending and lifting, or more severe and/or fatal injuries from roof or rib falls triggered by the removal efforts.

Further, the risk of an explosion due to an induced current from lightning appears from the discussion in the Preamble to be quite speculative. This seems to be especially true in deeper mines. If seals

are designed and constructed to withstand explosive forces, the potential ignition from an insulated conductor becomes nil. Because the highest potential for explosive mixtures is in the area near the seals, CMI would support requiring that no conductors be allowed through or inby the set of seals for a distance of 500 feet.

§75.337(c)

This proposed section would require that upon completion of construction of a seal a senior mine management official certify that the construction, installation, and materials used were in accordance with the approved ventilation plan.

Comment

This requirement is unreasonable and redundant because:

- The official may not be an engineer and may not have the expertise to make the certification.
- The official would not have direct knowledge about these matters unless he were physically present during the construction, which could happen on any shift and even on several consecutive shifts.
- Proposed §75.336(b)(2) would require that a P.E. have “oversight” of the seal construction and certify that the provisions of the seal design had been addressed.
- Proposed §75.337(b) would require that a certified person directly supervise the construction and make a record of his exam. Proposed §75.337(b)(5) would require that the mine foreman countersign that record.

CMI submits that the senior mine official should certify that, to the best of his knowledge and relying on the reports of the P.E. and the certified person, the seals were constructed in accordance with the approved design.

CMI also supports the comments submitted by the National Mining Association.

Respectfully Submitted

on behalf of Mark Premo

by Robert E. Johnson

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