
From: Linda Parsons [mailto:lp Parsons@umwa.org]
Sent: Friday, December 17, 2010 2:50 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: dodell@umwa.org
Subject: RIN 1219-AB71

2010 DEC 17 P 5:50

Attached are the comments of the United Mine Workers of America on the proposal for Safety and Health Management Programs for Mines. Please forward to the appropriate persons in your Agency for consideration.

Thank you,

Linda Raisovich-Parsons

AB71-COMM-13

United Mine Workers of America



TELEPHONE
(703) 291-2400

UNITED MINE WORKERS' HEADQUARTERS
18354 QUANTICO GATEWAY DRIVE, SUITE 200

Triangle, VA

22172-1779



December 17, 2010

Ms. Patricia Silvey
U.S. Department of Labor - Office of Standards
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington, VA 22309-3939

Dear Ms. Silvey:

Attached are the comments of the United Mine Workers of America on the Proposal for Safety and Health Management Programs for Mines published in the Federal Register September 9, 2010; RIN 1219-AB71.

The UMWA appreciates the opportunity to participate in this important rulemaking and asks that you forward our comments to the appropriate person(s) for consideration.

Sincerely,

Dennis O'Dell

Dennis O'Dell, Administrator
UMWA Department of Occupational
Health and Safety

Comments of the United Mine Workers of America
on the Request for Information for
Safety and Health Management Programs for Mines
RIN 1219-AB71
December 17, 2010

The United Mine Workers of America has reviewed MSHA's request for model programs for Safety and Health Management Programs for Mines. MSHA specifically asked for input from the mining community on model programs which are designed to prevent injuries and illnesses, maintain compliance with the Federal Mine Safety and Health Act, safety and health standards and regulations, and include participation of everyone from the Chief Executive Officer (CEO) to workers and contractors. MSHA asked for model programs to help develop a proposed rule for Safety and Health Management Programs for mines which will allow miners and operators to be proactive in their approach to health and safety. MSHA should recognize that no program will be successful without the active participation of the miners. Further, those miners who are participants must be selected by their peers to represent them. These miners' representatives must have a "place at the table" where their ideas and input will be treated with sincerity and respect. And lastly but most importantly, history has shown, overall, none of this will truly work without a union in place that has a collective bargaining agreement with the operator, such as our National Bituminous Coal Wage Agreement (NBCWA).

Article III of the NBCWA is the section of the collective bargaining agreement devoted to health and safety issues. To reinforce its commitment to health and safety in the workplace, Article III provides for a Joint Industry Health and Safety Committee composed of six members, three appointed by the Employers and three appointed by the Union. The goal of this committee is to develop and foster a relationship to meet and discuss health and safety matters of importance to the coal industry and where possible come to a consensus on issues. The language of the agreement at Article III Section (c) is as follows:

Section (c) Joint Industry Health and Safety Committee

There shall be a Joint Industry Health and Safety Committee composed of six members, three to be appointed by the Union, one of whom shall have special knowledge and expertise in coal mine health matters, and three to be appointed by the Employers, one of whom shall have special knowledge and expertise in coal mine health matters. The Committee shall consult with the Mine Safety and Health Administration and/or representatives of the Secretary of Health and Human Services, looking toward review and appropriate development and revision of improved mandatory health and safety standards as provided in section 101 of the Federal Mine Safety and Health Act of 1977. The Committee may also seek such joint consultations with the Mine Safety and Health Administration for discussion of the technical aspects of petitions by the Employer or the Union as provided in section 101(c) of the Act. Where agreed by the parties, the Committee may meet to discuss health and safety matters of importance to the coal industry.

Miners working at operations covered by the NBCWA also enjoy the representation of a Mine Health and Safety Committee which is made up of miners, selected by their peers. The Mine Health and Safety Committee works with the miners and the employer to assure their mine is operated in a safe and healthy manner. The Mine Health and Safety Committee has the right to inspect the mine on a regular basis (no less than once every two months); meets with the employer monthly to discuss health and safety issues; represents miners in health and safety issues and works with the employer and miners on general health and safety concerns. Miners working at non-union operations do not enjoy the benefits of having such a committee to look out for their interest, therefore, modeling a health and safety program to provide a similar committee at those operations would be beneficial, but there would be no agreement or binding contract in place to assure it would work. At our UMWA operations, these mine health and safety committee members take a serious and effective role and the fruits of their labor shows. Over the last ten years, less than 14% of all coal mine fatalities have occurred at UMWA represented mines. This is not a coincidence, but rather the determined and conscientious input of a mine health and safety committee that promotes a healthy and safe workplace. The number of coal mine fatalities at UMWA represented operation over the last ten years is as follows:

Coal Mine Fatalities		
Year	Total Coal Mine Fatalities	Coal Mine Fatalities at UMWA Mines
2000	38	2
2001	43	15
2002	28	3
2003	30	3
2004	28	6
2005	23	4
2006	47	5
2007	33	2
2008	30	3
2009	18	1
* 2010	48	1

* 2010 as of 12/15

Consequently, the UMWA is proud of the accomplishments of our members and Local Union Mine Health and Safety Committees. Article III, Section (d) of the NBCWA states as follows:

Section (d) Mine Health and Safety Committee

(1) At each mine there shall be a Mine Health and Safety Committee made up of miners employed at the mine who are qualified by mining experience or training and selected by the local union. The local union shall inform the Employer of the names of the Committee members. The Committee at all times shall be deemed to be acting within the scope of their employment in the mine within the meaning of the applicable workers' compensation law.

(2) The Union and Employer shall jointly establish and fund a course of health and safety training for members of the Mine Health and Safety Committee, which is designed to improve health and safety knowledge and skills. The Mine Health and Safety Committee shall participate in and shall be paid at their regular rates of pay by the Employer for attendance at training sessions. The training program will be established by the Joint Industry Training Committee.

(3) The Mine Health and Safety Committee may inspect any portion of a mine and surface installations, dams or waste impoundments and gob piles connected therewith. If the Committee believes conditions found endanger the lives and bodies of the Employees, it shall report its findings and recommendations to the Employer. In those special instances where the Committee believes that an imminent danger exists and the Committee recommends that the Employer remove all Employees from the involved area, the Employer is required to follow the Committee's recommendation and remove the Employees from the involved area immediately.

The Mine Health and Safety Committee shall, when engaged in its official duties as herein provided, be furnished transportation at the mine.

(4) The Committee shall give sufficient advance notice of an intended inspection to allow a representative of the Employer to accompany the Committee. If the Employer does not choose to participate, the Committee may make its inspection alone.

(5) If the Mine Health and Safety Committee in closing down an area of the mine acts arbitrarily and capriciously, a member or members of such Committee may be removed from the Committee. An Employer seeking to remove a Committee member shall so notify the affected Committeeman and the other members of the Mine Health and Safety Committee. If the Committee objects to such removal, the matter shall be submitted directly to arbitration within 15 days. If the other members of the Committee so determine, the affected member shall remain on the Committee until the case is submitted to and decided by the appropriate panel arbitrator. If the Employer requests removal of the entire Committee, the matter automatically shall be submitted to arbitration and the Committee will continue to serve until the case is submitted to and decided by the arbitrator. A Committee member shall not be suspended or discharged for his official actions as a Committee member.

(6) Mine management and the Mine Health and Safety Committee shall meet monthly at times arranged by the parties for the purpose of reviewing mine accident prevention efforts, discussing mine accidents and resolving health and safety problems at the mine. Special meetings may be called by either party for the purpose of resolving safety matters.

(7) The Employer shall be responsible for paying Committee members for the performance of the following duties:

(I) Inspecting the entire mine and surface installations connected therewith with management on a regular basis mutually agreed upon by the Employer and the Committee, but in no case any less often than every two months. The Employer shall be responsible for paying each Committeeman one shift at his regular rate of pay once in every two month period for performance of his duties under this paragraph.

(ii) Committee members shall be paid at their regular straight time rate of pay for up to two hours for time spent in joint monthly meetings with the Employer provided for in paragraph (6).

(iii) Investigating explosions and/or disasters including any mine fatality.

During Public Meetings MSHA heard comments from various operators where they have had success with their Safety and Health Management Programs. The most successful programs were those from union represented operations, where the collective bargaining agreement supports the workers when they speak up about safety concerns. Without a collective bargaining agreement, safety programs are weak and not worth much more than the paper they are written on. For example, Massey mines generally have a safety program in name at least, yet since 2000, 54 miners have been killed at their operations.

The UMWA supports any effort that enhances better health and safety protections for miners, but rather than proposing a rule on safety and health management programs, the Agency could better serve the miners by applying strict enforcement of the current laws. MSHA suggested the use of a risk assessment, risk management approach to enhance safety at the mine sites. A risk management/risk assessment approach to safety generally turns into a finger pointing or blame the worker tool, therefore, we strongly oppose the use of risk management/risk assessment to managing safety. We need to be in the business of ELIMINATING RISK...not managing them.

Some commenter's spoke about the success that has been achieved in Australia with risk management/risk assessment, but those that spoke, failed to give the workers perspective of this program in Australia. The Australian workers have pointed out that too often mine operators are quick and willing to sign off on plans without the agreement or input of the workers. If the workers object to the plan, the operator can and still implements the plan. The end results of these acts have caused serious and even fatal accidents to occur. The key reason that problems have not become much worse is because the Construction, Forestry, Mining & Energy Union (CFMEU) have full access to inspect all mines in Australia, union or nonunion. That is that the Union has the same authority that Federal and State inspectors have here in the United States.

A newspaper article came out in New Zealand in the wake of the recent mine disaster that just killed 29 miners stating the following:

Few changes have been made to the underground mining industry since two deaths in 2006 despite a review two years ago outlining ways to improve health and safety systems.

After two coal miners were killed on the West Coast in 2006 - one drowned and the other was killed by a rockfall - the Department of Labour reviewed the legislative and regulatory framework for underground mines.

Its report, released in 2008, raised several areas for possible increased regulation, including inspectors who would be elected by unions to check on the safety of a mines where workers raised concern.

Workers and union submissions said check inspectors would be the "single most effective solution for improving health and safety in underground mines".

That idea was opposed by mining companies which said it would create a confrontational management style.

Other issues raised were the need for safety regimes to be signed off by the Department of Labour and for areas of increased regulation around health and safety.

The main change was to increase the level of qualifications required by managers in small mines. That is expected to be in place by the new year.

Labour Minister Kate Wilkinson said that change applied to small mines, so while the Pike River event was a tragedy there was not much relevance. The idea of having check inspectors had been discounted based on Department of Labour and international advice, she said.

Check inspectors operate in at least one Australian state.

In their submission on the report in 2008, Pike River Coal said check inspectors were "totally inappropriate and not required".

"We believe that under such a regime there is a very high likelihood of abuse of such a position which will eventually ensure that health and safety will fail in that workplace."

Interpersonal conflict and potential personal grievance claims could result, its submission said adding that check inspectors were at odds with appointed mining officials.

But Peter Whittall, now Pike River Coal chief executive, warned the department that its underground mining regulations were inadequate, there were too few mines inspectors, and they had inadequate resources.

In a submission released to NZPA, Mr Whittall said safety regulations under the Government's coal mining legislation were "inadequate in some critical areas".

"Current mining regulations ... are in need of complete review and revision," he said. At the time Mr Whittall was general manager developing the Pike River mine.

- NZPA

29 more miners dead.....

Wikipedia describes Risk Management as follows:

1. "The strategies to manage risk include transferring the risk to another party, avoiding the risk, reducing the negative effect of the risk, and accepting some or all of the consequences of a particular risk."
2. "Certain aspects of many of the risk management standards have come under criticism for having no measurable improvement on risk even though the confidence in estimates and decisions increase."

The UMWA cannot imagine how sitting down with an operator and signing off on a Safety and Health Management Program, where the end results could still be a serious injury or fatal. This is not a smart way to do business, not to mention the liability issues.

If MSHA wants to see the mining industry in the United States take a huge step backwards in protecting miners, adopting a Safety and Health Management Programs for Mines incorporating the use of risk management/risk assessment is a way to make this happen. In the end, operators will use this as the ground work to eliminate or reduce the Mine Safety and Health Administrations' enforcement power given to them under the Mine Act.

A Union contract is the best way to protect employee's right to voice safety concerns. The Agencies time and efforts would be better spent by making sure that inspectors are using strict enforcement of the laws, at union and non union operations, fair and evenly across the coal fields. Safety and Health Management Programs for Mines plans that work are already in place such as the one under the UMWA/BCOA collective bargaining agreement. Others without a collective bargaining agreement will continue to have limited success.