

To: **David G. Zatezalo, Assistant Secretary for Mine Safety and Health**

From: Cathy Frazier, Director of Health and Safety, Rhino Energy LLC

Subject: MSHA Regulatory and Procedural Changes

Date: January 24, 2019

- 1) **Accountability** – Mine operators have laws that they are required to abide by on a daily basis. MSHA inspects their operations for compliance and cites the operator if they are in violation. MSHA personnel should be held to the same standard and comply with their policy manual. Inspectors who continually have contested violations vacated or changed should be held accountable for the inability to abide by the standards. Inspectors should be ambassadors for safety and act in a respectful and professional manner when they are at a coal mine. The continued adversity that inspectors push on the operator virtually eliminates any cooperation between MSHA and the operator and makes it harder for both groups to get a buy-in to safety on the mine level. Cooperation and mutual respect would go a long way in getting miners to believe in the concept of safety versus the police tactics that put them all on edge every time an inspector shows up. We both want the same thing, a safe and productive working environment for us all. Working together will help achieve that objective for us all. Quote from the MSHA Mission page *“We work cooperatively with industry, labor, and other Federal and state agencies to improve safety and health conditions for all miners in the United States.”*
- 2) **Expertise** – MSHA specialists and supervisors, like any other professional, should engage and make decisions only in areas they are trained and competent in. MSHA representatives acting outside their area of expertise has led to an abundance of poorly written citations and often those decisions have a negative impact on the health and safety of the work force. I find it rather ironic that operators are required to have registered professional engineers verify the competence of engineered structures while an inspector with no formal training can write a violation stating that the structure is unsafe. Something wrong with that scenario.
- 3) **Consistency** – Technology today allows large groups to all receive the same video transmissions from all over the world. Considering that is available today, it seems rather ironic that all inspection procedures are different in all districts as well as within each work group. Training in inspection procedures should be an easy task to accomplish. Coal miners are required a minimum of 16 hours of retraining in their profession each year and it would only seem prudent that inspectors should receive retraining for their positions as well. The disparity I have seen between work groups and districts is amazing to me. It appears each District has their own agenda and forcing its operators to conform to their interpretations by stating this came down from headquarters.
- 4) **75.372(b)(2)** - Issuing violations for items left off the mine map should not happen. Inspectors can amend violations when they make errors without consequences but simple items left off a mine map are violations during the review process. Violations

should be written to protect the health and safety of the miner. Nothing about this is reasonable or justified.

- 5) **Respirable Dust Regulations** – Need to reduce the number of samples necessary to meet sampling requirements. There is only one manufacturer of the CPDM and now the units that were initially put in service are getting some age on them and we continue having difficulty keeping them running properly. There are also still operators out there who do not have enough equipment to run the required samples. Operators who comply with the law are at a competitive disadvantage. Operator should be allowed to run ODO designations at the same time. Air requirements should not change, so there is no advantage other than getting the sampling completed more efficiently without tying up a safety person continuously for the quarter. MSHA should not have the ability to keep the operator from sampling because they are sampling.
- 6) **50.10** – Immediate notification time limit is unreasonable. If there is an emergency situation, an operator should have the ability to focus on the problem without worrying how much time he has to call it in. Fifteen additional minutes will not change the outcome for MSHA but may help save someone's life.
- 7) **Numerous Inspectors at Mine Sites** – There are days that plus four inspectors will show up at one location with each saying they did not know that the other was reporting to that particular mine. It should be the supervisors job to know where his inspectors are going every day and limit the amount of inspectors at a given mine on any particular day.
- 8) **Contest Conferences with CLR** – When an operator chooses to contest a citation based on the validity or the way the violation has be marked, he should have a fair and impartial conference litigation officer who has the authority to vacate or change a violation based on the facts presented to him. Having the CLR report to the District Manager where the violation was written takes away the due process and impartiality. District Managers seldom go against their inspectors without actually looking at the issue to ensure that the citation was properly written. This is the reason most contests end up with the solicitor and a lawyer for the operator. No one wins in this situation. Fair and impartial negotiations with the parties involved could limit the contests out there and keep from clogging up the system.
- 9) **Discrimination Complaints** – The threshold for a complaint that is frivolous is so easily met that virtually anyone who has been terminated could file a complaint. Operators are automatically guilty based on investigators assumptions and will file for temporary reinstatement most of the time. The sad part of all of this is when the case goes to court and the complainant is found to have no basis for his reinstatement, the money paid him is not refunded to the company. If some of these persons had to pay back what they were given in error, there might be a whole different look to the system. No one wants coal miners to be treated unfairly but there has to be a better way to evaluate cases on the merits of right and wrong. Assuming an operator is guilty is not a fair process.
- 10) **If there is not a rule to cover the violation, do not use another one to cover it. Fix the problem.** 77.205 is a rule for travelways at surface installations, but that is primarily used to write handrails on mobile equipment. There is a section of Part 77 that covers mobile equipment and the handrails should be written there. Serious consideration should be given to ensuring laws are written to address the problem, not

make it up as you go. This is the same with **75.400** violations that turn into a catch all for all cleanliness issues no matter what the condition is or where it is.

- 11) **75.1403 Other Safeguards** – This portion of the law has become overly burdensome for operators and covers a various array of unrelated issues under the same section of the law. Safeguards are written on a particular incident and are later used and modified to continually place the operator on notice for other instances that are barely related to the initial safeguard. In addition, safeguards written to the previous operator are held in place for that mine identification number no matter what has changed in the the mine since the initial extended time period for that operation. The interpretation of the general criteria in **75.1403-1** needs a serious consideration for a second look. Safeguards should be written on a specific condition and operator at the time of the condition.
- 12) **PIB P14-04** – This document removed expiration dates for all MSHA directives. The policy should be rescinded and directives should have time limits. This would allow directives to be analyzed at their end date to see if they remain valid based on their relevance to current industry conditions. This would ensure that obsolete directives would be cancelled.