



April 26, 2018

David G. Zatezalo
Assistant Secretary of Labor
Mine Safety & Health
201 12th Street South
Arlington, VA 22202

Re: Industry/Agency

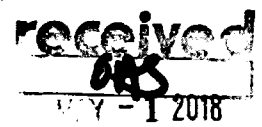
Dear Assistant Secretary Zatezalo;

The Commonwealth of Kentucky is one of the leading coal-producing states in the nation, and the Kentucky Coal Association ("KCA") has a strong interest in addressing the complex issues that face the nation's coal industry. Please allow this letter to serve as a pragmatic exchange of ideas and concerns held by our stakeholders:

Use of Belt Air: In 1989, after a thorough review of safety factors associated with the use of belt air in working sections underground, MSHA issued a Belt Entry Ventilation Review Report concluding that directing belt entry air to the face was at least as safe as other ventilation methods, as long as carbon monoxide monitors and smoke detectors were installed in the belt entry. In 1992, an Advisory Committee appointed by the Secretary of Labor determined, likewise, that air in the belt entry could be safely used to ventilate working places in underground coal mines. Accordingly, in 2004, MSHA released its final rule permitting the use of belt air to ventilate working sections underground. In the preamble for the final rule, MSHA said(t)he use of belt air, under the conditions set forth in the final rule, will maintain the level of safety, and therefore not reduce protections, currently afforded miners in underground mines while implementing advances in mining technology."

Prior to the implementation of the 2004 final rule, a mine operator was required file a 101(c) Petition for Modification to seek approval to use belt air to ventilate working places in the underground mine. In order for the Petition to be granted, it had to provide an alternate method that guaranteed no less than the same measure of protection afforded by the existing standard(s). By 2004, there were nearly 100 Petitions granted across the United States, permitting the use of belt air to ventilate working sections. MSHA used their experience gained through the granted petitions and the mine operators' proven success of using belt air to ventilate the working section as a foundation for developing the 2004 final rule.

Reg Reform Comm-057



On December 31, 2008, MSHA amended 30 C.F.R. section 75.350(b) to permit the use of air from a belt air course to ventilate a working section, or an area where mechanized mining equipment is being installed or removed, only when evaluated and approved by the district manager in the ventilation plan. Despite numerous advances in modern technology that reinforce the agency's conclusions that the use of belt air is safe, very few ventilation plans have been approved to permit the use of belt air. In April 2010, Procedure Instruction Letter ("PIL") No. I10-V-06, which was later reissued in May 2012, as PIL No. I12-V-14, further restricted the use of belt air by adding a requirement that any mine wishing to use belt air must demonstrate a compelling reason to do so.

The application of the amendment and the now-expired PILs failed to take into consideration compelling pertinent advancements in safety technology, design and operations that currently are being used in underground mining operations. For example, since underground coal mining operations have been required to use flame-resistant conveyor belts, there have not been any reportable accidents resulting from belt fires. Technological advances in Atmospheric Monitoring Systems have made them more accurate, durable and reliable. Newly developed "wireless" carbon monoxide sensors have allowed greater flexibility in placing additional sensors at strategic locations along the belt air course. These improvements have enhanced detection and early intervention whenever minute increases in the products of combustion are present. Moreover, self-rescue equipment has become miniaturized and is distributed throughout the mine in such a way that miners are adequately protected in the event that evacuation should become necessary.

The August 2016 implementation of the 0.5 mg respirable dust standard for intake air courses would apply to belt air courses when used to supply air to the working section. Further improvement of dust control can be achieved by using the belt entry as an additional fresh air supply. Likewise, the June 2011 amendments requiring 80% incombustible content of rock dust along belt conveyor entries have added another measure of safety. At the same time, the use of belt air is a simpler ventilation system, which can be better serviced, monitored and maintained, resulting in improved safety conditions. The use of air in the belt entry provides positive ventilation and reduces the potential for methane to build. For these reasons, MSHA should encourage its district managers, consistent with the regulatory text, to more readily approve ventilation plans proposing the use of belt air to ventilate working sections and setup or removal areas.

Rules to Live By: In March 2010, MSHA implemented a program entitled "Rules to Live By." MSHA sought to further reduce mining fatalities, which in 2009 had fallen to an all-time low for the second straight year. Special emphasis was placed on eleven mandatory safety standards pertaining to the coal industry that had been frequently cited in fatal accident investigations in calendar years 2000 through 2008. MSHA began "enhanced enforcement" relating to these standards, which quickly revealed that, when these standards were involved, MSHA was not assessing the violations on a case-by-case basis, taking into account the penalty criteria set forth in the Mine Act and the regulations. Rather, it was automatically applying substantially higher special assessments any time it issued violations of the "Rules to Live By." See, e.g., *North County Sand & Gravel, Inc. v. Secretary*, 36 FMSHRC 1214, 1222 (May 2014), in which the Secretary disclosed that it is MSHA's policy to specially assess all violations of standards included in its Rules to Live By initiative. There has also been indication that many

inspectors automatically mark violations of the Rules to Live By as "significant and substantial," without conducting the appropriate analysis associated with such a determination.

Since 2010, the number of coal industry standards encompassed within the Rules to Live By has increased from eleven to twenty-nine. They include such broad standards as 30 C.F.R. section 75.202(a), which requires that mine roofs and ribs be controlled in areas where persons work or travel; 30 C.F.R. section 75.220(a)(1), which requires that mine operators develop and follow an approved roof control plan; 30 C.F.R. section 75.370(a)(1), requiring the operator to develop and maintain a suitable ventilation control plan; and 30 C.F.R. sections 75.360(a)(1), 75.360(b)(3), 75.362(a)(1) and 77.1713(a), relating to pre-shift, on-shift and daily inspections. The standards address all areas of mine safety, ranging from use of seat belts to illumination. While some violations of these standards can certainly have serious consequences, other violations result in little or no likelihood of injury to miners. Accordingly, to maintain integrity in the enforcement process, it is important that all violations be evaluated based upon the specific facts at hand, rather than applying a rote policy of special assessment and "significant and substantial" designation just because a standard appears on a pre-selected list. We urge you to ensure that the agency understands its duty to evaluate citations and orders (and the proposed assessments) on a case-by case basis, according to the statutory and regulatory criteria.

Impact Inspections: In April 2010, MSHA began a special enforcement initiative targeting mines that have poor compliance histories with "impact inspections." These inspections addressed the "Rules to Live By" areas of the examination regulations and most citations issued under these standards were considered for special assessment. MSHA's primary justification for implementing the impact inspection initiative in 2010 was to address mines with poor compliance histories within the mining industry.

These impact inspections are extremely disruptive and burdensome to the mining industry, as they curtail the daily duties of the mining operations' top staff. Rather than being able to provide close supervision and conduct behavior observations of the miners assigned to them, they spend the majority of the shift traveling with the inspectors. Many times, the mine operators' rights under 103(f) of the Mine Act are violated as they are not afforded the opportunity to accompany the inspectors because of the inopportune time in the shift in which the impact inspection begins. There have also been times when MSHA inspectors erroneously alleged that the mine operator was providing advanced notice of the inspection as efforts were being made to contact mine managers who were already underground performing their daily duties to accompany the inspectors..

Since the implementation of the Impact Inspection program, the mining industry has shown extraordinary performance in the area of health and safety. MSHA's own data has revealed historical performance in all areas of health and safety in the nation's coal mines. The data indicates record lows relative to citations/orders issued, elevated enforcement actions, percentage of S&S citations/orders, dollar amount assessed, fatal injury rate, NFDL injury rate, lost-time rate, and all injury rate. In addition, the initial results from the implementation of the respirable dust rule indicate stellar compliance by the mining industry. By any conceivable metric, the mining industry is much safer today than in 2010. Despite these improvements in

miners' health and safety, MSHA continues to routinely conduct impact inspections each month without providing any details as to the reason for selecting that respective mining operation. We ask you to consider immediately discontinuing the Impact Inspector process, as it no longer serves the purpose for which it was intended.

Conferencing: 30 C.F.R. section 100.6 outlines the conferencing process, which MSHA's own website describes as "an unbiased review" of citations and orders with which the operator disagrees. In theory, this process could be an effective means of resolving disputes relating to the issuance of citations and orders. However, in practice, this process is largely futile because the conference officer is supervised by the district manager and/or other direct supervisors within the issuing district office. Because the conference officers are ultimately subject to the evaluation and control of the same entity that issued the citations and orders, they are inhibited from truly providing an independent, unbiased review of the inspector's decision to issue the citation or order. In addition, many conference officers are told that they do not have authority to make changes beyond certain minimal modifications, which hampers the process from the beginning. We propose that the conferencing process should be re-vamped to establish conference officers who hold positions outside of the issuing district, so that truly independent, unbiased review can occur. The conference officer should also be given full authority to modify and/or vacate citations and orders if the facts support such an action.

Plan Approval Process: As outlined in 30 C.F.R. sections 75.220 and 75.370, MSHA's criteria for approving both roof control and ventilation plan submittals is that the plans and/or addendums must be "suitable" to the conditions and the mining system being used at the mine. However, many times MSHA applies personal opinions when reviewing the plan submittals and asserts that "more" elements are always better, rather than evaluating the submitted information on its merit and suitability. In addition, MSHA district offices routinely forward mine plans, even the less complicated ones, to Tech Support for an enhanced review, which greatly increases the time for approval.

Furthermore, Operators in numerous districts are experiencing inordinate delays in mine plan reviews and approvals. Operators frequently have so many inspectors on their mine property that they have trouble finding enough personnel to travel with them, and yet operators are often told that MSHA is understaffed when it comes to plan approvals. The plan approval process has also become increasingly cumbersome. Important decisions about the safe operation of the mine are often unresolved until timing becomes critical to the operator, when the operator feels compelled to accept one-sided provisions that would otherwise be outside the purview of the plan approval process. This results in inefficient and expensive delays, sometimes for issues as simple as a typical section move. It also creates the potential to allow an unsafe mining environment when changes in mining conditions require a prompt mine plan review and alteration. The agency should implement an effective system of oversight from the districts and headquarters to ensure timely and fair reviews.

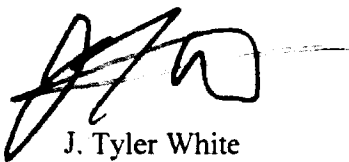
101(c) Petitions for Modification: Technological advances have occurred in the mining industry over the years that have not been reflected in the 30 C. F. R. These advances provide alternative and more efficient methods of performing tasks that enhance the safety of miners. As an alternative to revamping the 30 C.F.R., the industry could capitalize on the benefits of these

advancements through the use of the petition for modification process. However, the timeliness of the review of requested Petitions has discouraged mine operators from filing them. It is common for an investigation and subsequent decision of a requested Petition to take over a year, even when those requests are garden variety, such as requests to use diagnostic equipment in by the last open cross cut. MSHA claims there is a backlog in processing Petitions due to staffing deficiencies. However, the daily excessive inspector presence at the mining operations indicates over-staffing rather than staffing deficiencies. It would seem to be a much more efficient use of agency resources to employ some of the inspectors with the requisite expertise to process the Petitions.

MSHA should use their experience gained through the granted Petitions and the mine operators' proven success of implementing these Petitions as a means to promulgate regulations in these areas. This would eliminate the need for the mine operator to jump through the hoops to get a simple Petition request granted and reduce MSHA's backlog in this area.

We welcome the opportunity to hold a constructive dialogue with you and the agency to advance the industry's commitment to the safety and health of the nation's miners. Please do not hesitate to contact me with any questions or concerns you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Tyler White', with a horizontal line extending to the right.

J. Tyler White
President, Kentucky Coal Association