

MINUTES
BOARD OF COAL MINE SAFETY
June 3, 2009 - Uniontown, PA

BOARD MEMBERS

John Hanger, Chairman, Acting Secretary, Department of Environmental Protection
J. Scott Roberts, Alternate for Chairman John Hanger
Ron Bowersox, United Mine Workers of America
James Sabella, United Mine Workers of America
Frank Reidelbach, United Mine Workers of America
John Gallick, Foundation Coal Corporation
Stanko Popich, TJS Mining
Albert Aloia, CONSOL Energy, Inc.

DEPARTMENT STAFF PRESENT

Joseph Sbaffoni, Director, Bureau of Mine Safety
Daniel Lapato, Executive Policy Specialist, Office of Policy and Communications
Marc Roda, Attorney, Office of Chief Counsel
Robert Maiden, Assistant to the Secretary
Mary Martha Truschel, DEP Program Counsel
Allison Gaida, Administrative Officer, Bureau of Mine Safety

OTHERS PRESENT

Tom Todd, RoxCoal
George Ellis, Pennsylvania Coal Association

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman John Hanger called the meeting to order at 10:10 a.m. in the Bureau of Mine Safety conference room, Fayette County Health Center, 100 New Salem Road, Uniontown, PA. As new members have been appointed since the last meeting, Chairman Hanger requested introductions from all members and the public present. All members of the Board were present.

The Board considered its first item of business -- the January 14, 2009, meeting minutes. The Chairman wanted to note that, if in the future, the members wished to have a caucus, a motion be made to adjourn, halt the meeting, and then reconvene after the caucus.

**Jim Sabella moved to adopt the minutes as read. Ron Bowersox
seconded the motion –the Board unanimously approved the motion.**

Prioritize Development of Regulations Implementing Federal Safety Standards as Required in Section 106.1(b)(1) and (c):

At Chairman Hanger's request, Scott Roberts provided introductory comments to the Board on this agenda item. All members had been provided with a spreadsheet identifying the Mine

Safety and Health Administration (MSHA) standards in Part 75 that were not included in Chapters 2 or 3. The Board reviewed and discussed this comparison of the MSHA regulations. Chairman Hanger opened the floor for discussion. The members discussed what standards would be best addressed by the Board. Since the new Miner Act under CFR Part 75.1500 was not discussed during negotiations, John Gallick suggested that the Board take on as the first group of rules, those things that were implemented in the Miner Act and are now final. John Gallick suggested separating out the surface portion of Part 77 that only pertained to surface facilities of underground coal mines. Scott Roberts relayed that the DEP has been promulgating regulations dealing with the surface mine statues under a separate Board.

Chairman Hanger asked if there were any more comments. There are 90 items on the list, and the Board needs to determine where to start. With none heard, he summed up that the Board would focus first on mine emergency provisions (75.1500) and then the mine seal provisions (75.335-339).

A motion was made by Stan Popich for DEP to prioritize the development of regulations 75.1500, mine emergency provisions and 75.335-339, mine seal section. The motion was seconded by Albert Aloia. All Board members were in favor and the motion carried unanimously.

Shelters/Chambers - Review Comparison of Section 106.2 Standards with MSHA Standards:

At Chairman Hanger's request, Scott Roberts provided introductory comments to the Board on this agenda item. The Pennsylvania Bituminous Coal Mine Safety Act (BCMSA) gave the specific task to the Board to look at shelter requirements in the Act. If Federal rulemaking didn't make up rules or failed to consider items on that list, the Board is to take up the list of items. The Board members had been provided with a table comparing the safety standards for emergency shelters and chambers to be considered by the Board under Section 106.2 of the BCMSA with the applicable MSHA standards in Parts 7 and 75. This analysis showed whether the rules were the same, more, or less stringent. Ron Bowersox and Albert Aloia both had concerns that, if the Board adopts the final rule, what the outcome would be if existing litigation mandates changes.

Discussion took place on the relevance of the 250-day timeframe dealing with MSHA regulations that have been promulgated since the passage of the BCMSA on January 3, 2009. DEP Regulatory Counsel Marc Roda clarified that the Board is to start to consider regulations within the 250-day period.

With no further comments, a motion was made by John Gallick for the Board to hold discussion on refuge chamber regulations pending, at a minimum, the final adjudication of any lawsuits that are presently in litigation at the Federal level. Ron Bowersox seconded this motion. All Board members were in favor and the motion carried unanimously.

Belt Flammability Standards:

At Chairman Hanger's request, Scott Roberts introduced this agenda item. The requirement is that if MSHA did not promulgate regulations, the Board would. The law did not provide a list of items for the Board to consider. On December 31, 2008, MSHA did promulgate CFR 614-18 dealing with, not only flammability standards for belts, but various ventilation requirements. Chairman Hanger opened the floor for discussion. John Gallick stated that the Federal standard is separated into two parts -- belt flammability and belt air rules. The law itself requires that the Board consider promulgating rules regarding flammability standards. John Gallick believes that MSHA has already done that, and the Board should not deal with that part of the standard. It was brought to the Board's attention that there are lawsuits concerning some of these standards. Albert Aloia stated that the Federal regulations say that all coal mines are to be using the new belt standards by December 31, 2009, so the Board does not need to do anything on this issue. Ron Bowersox stated that the federal law will be complied with regardless of the outcome of the lawsuit.

Albert Aloia made a motion to accept the final Federal rule on belt flammability standards. John Gallick seconded this motion. All Board members were in favor. The motion carried unanimously.

NEW BUSINESS

Automated External Defibrillators (AEDs) in Mines:

At Chairman Hanger's request, Scott Roberts made introductory comments on this agenda item. A letter from State Representative Timothy Mahoney to Ed Yankovich, Jr., International Vice President, UMWA District #2, was brought to the Board's attention during the last meeting by Ron Bowersox. The letter addressed concerns of Ms. Karen Hampton on the lack of AEDs in Pennsylvania mines.

Ron Bowersox stated that most of the bigger mines already have AEDs. Discussion took place on the safety and effectiveness of AEDs in wet mining environments. At Scott Roberts' suggestion, Board members will be provided with the AED material that Ron Bowersox obtained from Cardiac Science on the PowerHeart AED. Arrangements will be made for an AED professional to speak at the next Board meeting in September to provide more information on the safety of using the equipment in wet conditions. John Gallick also offered to contact people in the mining industry familiar with these units.

No action will be taken on this matter until the Board is provided with additional information at the next meeting.

Process for Introducing New Items to the Board:

John Gallick questioned the process for non-Board members to bring items up for discussion by the Board as agenda items. Chairman Hanger explained that items can be brought up by any

Board member. Also, the public comment session gives individuals other than Board members an opportunity to bring issues to the Board's attention, but a Board member would then have to bring it up as an agenda item. If someone in the public makes a comment, and Board does not take action, it may not lead to an agenda item.

Scott Roberts reminded the Board that by-laws could still be developed to lay out how items are brought to the Board. This item will be placed on the agenda for the next meeting.

A public comment was received from George Ellis, Pennsylvania Coal Association. He stated that anyone should have a right to have an issue placed on the agenda as the state has never before had the power to make rules.

John Gallick initiated a discussion on the Department's development of policy concerning accident notification and requiring fire extinguishers on scoops. John Gallick felt that the issues should be addressed by the Board instead of the Department expanding requirements in the Act. It was brought to the Board's attention that the items referred to by Mr. Gallick were presently in litigation and should not be discussed. Discussion continued as to the Department developing policy on an item in the Act versus the Board promulgating regulations (in what circumstances should each be utilized).

The next meeting will be held on September 9 at 10 a.m. in the Fayette County Health Center in Uniontown. Scott Roberts clarified the following agenda items for this meeting:

- DEP to present to the Board analysis of regulations that were prioritized at this meeting. Board to determine whether they want a rule actually written on those.
- Suggest the topic of by-laws be added under 'Old Business'
- Under 'New Business' have an AED representative of a manufacturer or distributor answer Board's questions on the use of AEDs in the mining environment.
- Discussion about deployment of AEDs in present mines
- DEP to make a presentation regarding rulemaking and policy development

ADJOURNMENT:

With no further business to discuss, Chairman Hanger called for a motion to adjourn the meeting.

Ron Bowersox moved to adjourn the meeting. Frank Reidelbach seconded this motion.

The official meeting adjourned at 11:30 a.m.