

MINUTES
BOARD OF COAL MINE SAFETY
Bureau of Mine Safety Training Facility
March 27, 2012 – Ebensburg, PA

BOARD MEMBERS

John Stefanko, DEP, Deputy Secretary for Active and Abandoned Mine Operations,
alternate for Chairman Michael Krancer, DEP, Secretary
Ron Bowersox, United Mine Workers of America
Frank Reidelbach, United Mine Workers of America
Albert Aloia, CONSOL Energy, Inc.
John Gallick, AlphaNatural Resources
Stan Popich, Rosebud Mining Company
Jim Sabella, United Mine Workers of America

OTHERS PRESENT

Joseph Sbaffoni, Director, DEP, Bureau of Mine Safety
Jim Smith, Independent Regulatory Review Commission
Richard Morrison, DEP, Bureau of Regulatory Counsel
Michele Tate, DEP, Policy Office
John Burr, CONSOL Energy, Inc.
George Ellis, Pennsylvania Coal Association
Jim Lamont, UMWA
Todd Moore, CONSOL Energy, Inc.
Alan L. Martin, DEP, Bureau of Mine Safety
Dennis Coffey, DEP, Bureau of Mine Safety
Jeffrey Stanchek, DEP, Bureau of Mine Safety
Jeff Kerch, DEP, Bureau of Mine Safety
Allison Gaida, DEP, Bureau of Mine Safety

CALL TO ORDER AND APPROVAL OF MINUTES:

Deputy Secretary for Active and Abandoned Mine Operations John Stefanko served as Chairman in Secretary Krancer's absence. Acting Chairman Stefanko called the meeting to order at 10:03 a.m. in the DEP Bureau of Mine Safety Mine Rescue and Training Facility in Ebensburg. All Board members were present. Acting Chairman Stefanko asked that introductions be made around the room.

The Board considered its first item of business, which was the approval of the December 13, 2011, meeting minutes. Acting Chairman Stefanko called for a motion to adopt the minutes.

Ron Bowersox moved to adopt the minutes as presented to the Board. Albert Aloia seconded the motion, which was unanimously approved by the Board.

IRRC's ROLE IN THE REGULATORY DEVELOPMENT PROCESS:

Guest speaker Jim Smith from the Independent Regulatory Review Commission (IRRC) presented an overview to the Board on the regulatory review process and IRRC's role in that process. Mr. Smith answered questions from the Board after his presentation.

AED RULEMAKING - IRRC COMMENTS:

On January 4, 2012, IRRC issued comments on the Board's proposed rulemaking concerning Requirements for Automated External Defibrillators (AEDs). Those comments, which must be addressed by the Board as part of the final rulemaking, were distributed to the Board prior to the meeting. In order to develop responses to the comments presented by IRRC, Acting Chairman Stefanko read the comments issued by the Commission, which included the following topic areas:

1. Consistent with the Equipment Approval Task Force Guidelines

The PCA developed a draft response to address IRRC's concerns over the Board's incorporation of guidelines (i.e. Equipment Approval Task Force guidelines") in the proposed rulemaking. IRRC's concerns included that guidelines can be amended outside of the procedures in the Regulatory Review Act, without notice and the opportunity for public comment, review by the legislature and IRRC, and that the guidelines can also be amended without consideration of the effect on the AED rulemaking and compliance by the regulated community. PCA's response elaborated on why the organization felt the reference to the task force guidelines in the rulemaking was appropriate and consistent with the Legislature's intent as embodied in the Pennsylvania Bituminous Coal Mine Safety Act.

A motion was made by Albert Aloia to remove language from the draft regulations referencing the "Equipment Approval Task Force Guidelines." Ron Bowersox seconded the motion. All were in favor and the motion passed unanimously.

2. Effective location of AEDs

In response to IRRC's concerns that the proposed requirements associated with the placement of AEDs at "a location on the surface of the mine" is vague, John Gallick responded that the proposed requirement was to be more "performance oriented" than prescriptive so that AEDs could be placed in a mine where it was thought to be most effective and best located by EMTs and mine workers. Jim Smith however explained that vague terms and words should not be used in regulations so that it is "clear to all" how one must comply with the rulemaking requirement and how one must enforce the requirement.

Further discussion took place among Board members on how to respond to IRRC's concerns, including the location of AEDs on the surface and underground of a mine site.

A motion was made by John Gallick that paragraph (a)(1) of the rulemaking be amended to state that an AED must be placed on each working section of a mine, because "working section" is a statutorily defined term in the Bituminous Coal Mine Safety Act. Jim Sabella seconded the motion. All were in favor and the motion passed unanimously.

Stan Popich made a motion to revise paragraph (a)(2) of the rulemaking in order to incorporate federal language in the paragraph to require that AEDs be stored with the first aid equipment on the surface in close proximity to the mine entrance. Frank Reidelbach seconded the motion. All were in favor and the motion passed unanimously.

3. Emergency medical personnel

Jim Smith explained IRRC's concern over the use of the term "emergency medical personnel" in the proposed rulemaking. He noted that the term is neither a defined term in the rulemaking nor a defined term in the Bituminous Coal Mine Safety Act. He further noted that the Bituminous Coal Mine Safety Act defines two terms, including "emergency medical technician" and "emergency medical technician paramedic"; however, neither term is used in the proposed rulemaking.

A motion was made by John Gallick and seconded by Ron Bowersox that all references in the rulemaking which include "emergency medical personnel" be replaced with the terms "emergency medical technician" and "emergency medical technician paramedic". All were in favor and the motion passed unanimously.

4. Training

In their comments, IRRC suggested that the rulemaking be amended to specifically require CPR training in addition to AED training for mine personnel. Board members discussed that since CPR training is already required of mine personnel in other regulations, it would be duplicative to add the requirement in this rulemaking.

Albert Aloia made a motion that no changes be made to the rulemaking in response to IRRC's comments on training. Jim Sabella seconded the motion. All were in favor and the motion passed unanimously.

5. Maintenance and Inspection

IRRC noted in their comments that if the Board believes there is a need for AEDs to meet specific safety requirements in order to be used in a mine, it would be appropriate to add specific requirements for AEDs to subsection (c) of the proposed rulemaking or to another

subsection specifically dedicated to the topic. John Gallick noted to the Board that since maintenance and inspection of relevant equipment, including AEDs, is conducted as the “normal order of business” prior to each working shift, he did not believe it was necessary for the Board to add additional requirements in the rulemaking.

John Gallick made a motion that, in lieu of imposing specific requirements in the rulemaking, the Board will elaborate in the Comment/Response document the existing practices already used by mine personnel to maintain and inspect equipment as a normal course of doing business. Jim Sabella seconded the motion. All were in favor and the motion passed unanimously.

In response to the motions concerning IRRRC’s comments, DEP staff will develop a comment/response document for the final rulemaking as well as an amended Annex. These materials will be provided to the Board in anticipation of its review of the final rulemaking package at the June 19, 2012, meeting.

DEP AUTHORITY UNDER SECTION 106.1(C) OF BCMA:

Richard Morrison provided an interpretation of Section 106.1(c) of the Bituminous Coal Mine Safety Act to the Board stating that this section authorizes, but does not compel, DEP to promulgate regulations without Board action. Although this clarification was provided, Acting Chairman Stefanko emphasized to the Board that it is not the Department’s intention to move forward with a rulemaking without Board concurrence and that it would work cooperatively with the Board on future rulemakings.

DRAFT REGULATIONS - SECTION 106.4 STANDARDS FOR SURFACE FACILITIES:

Acting Chairman Stefanko asked if Board members had an opportunity to review the proposal that PCA presented at the last meeting concerning regulations to implement provisions of Section 106.4 Standards for Surface Facilities of the Bituminous Coal Mine Safety Act.

A motion was made by Albert Aloia to direct the DEP to draft a regulatory package associated with Section 106.4 for Board review prior to the next meeting of the Board on June 19, 2012. Frank Reidelbach seconded the motion. All were in favor and the motion passed unanimously.

DRAFT REGULATIONS - 30 CFR 75.403 MSHA REGULATIONS, MAINTENANCE OF INCOMBUSTIBLE CONTENT OF ROCK DUST:

Richard Morrison provided a draft of a proposed Chapter 208 rulemaking to implement provisions that conform with federal regulations at 30 CFR 75.403 regarding maintenance of incombustible content of rock dust.

A motion was made by Albert Aloia for the Board to review the draft rulemaking and discuss it at the next Board meeting. Ron Bowersox seconded the motion. All were in favor and the motion passed unanimously.

UPDATE ON PCA CABLE STUDY:

John Burr distributed the final report of the Section 334 industry study on cables. He encouraged Board members to call him with any questions prior to the next meeting.

Acting Chairman Stefanko recommended the Board review the report and discuss it at the June 19, 2012, Board meeting.

A motion was made by John Gallick and seconded by Ron Bowersox for the Board to review the report and place the report as an agenda item to discuss at the next Board meeting on June 19, 2012. All were in favor and the motion passed unanimously.

PUBLIC COMMENTS:

Acting Chairman Stefanko asked if there were any public comments.

Joe Sbaffoni informed the Board that 2011 was the Commonwealth's second calendar year without any mine fatalities.

ADJOURNMENT:

With no further business to discuss,

Frank Reidelbach made a motion to adjourn the meeting. Albert Aloia seconded this motion, which was unanimously approved by the Board.

The official meeting adjourned at 12:38 p.m. The next meeting is scheduled for June 19, 2012, at 10 a.m. at the DEP Bureau of Mine Safety Building in Ebensburg.