

MINUTES
BOARD OF COAL MINE SAFETY
DEP Cambria Office
March 6, 2018 – 10 a.m. – Ebensburg, PA

VOTING BOARD MEMBERS PRESENT

John Stefanko, DEP, Deputy Secretary for Active and Abandoned Mining Operations
John Gallick, PCA
Joseph Zelanko, PCA
Chuck Shaynak, PCA
Frank Reidelbach, UMWA
Ron Bowersox, UMWA
Jim Sabella, UMWA

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Laura Edinger, DEP Policy Office
Colvin C. Carson, DEP, Director, Bureau of Mine Safety
Matt Kessler, DEP, Office of Chief Counsel
Arthur Brower, DEP, Bureau of Mine Safety
Allison Gaida, DEP, Bureau of Mine Safety
Peggy Scheloske, DEP, Bureau of Mine Safety

OTHERS PRESENT

Ben Stock, Rosebud Mining
Donald R. Foster, Jr., LCT Energy
R. Henry Moore, Jackson Kelly/PLLC
Will Dando, PCA

CALL TO ORDER AND APPROVAL OF MINUTES

John Stefanko, DEP Deputy Secretary for Active and Abandoned Mining Operations and Acting Chairman of the Board of Coal Mine Safety (BCMS or Board) called the meeting to order at 10:16 a.m. in the DEP Cambria Office, Conference Room 1A/B in Ebensburg.

Acting Chairman Stefanko introduced himself and asked for introductions around the room. The Board then considered its first item of business, which was approval of the September 5, 2017, meeting minutes.

**Joseph Zelanko made a motion to adopt the September 5, 2017, BCMS minutes.
Ron Bowersox seconded the motion, which was unanimously approved by the Board.**

UPDATE ON FINAL RULEMAKING: PROXIMITY DETECTION SYSTEMS:

The Board tabled this final rulemaking at its December 2016 meeting, awaiting the resolution of implementation issues with the federal regulation. The issues that needed to be corrected at the

Federal level were not resolved within the timeframe necessary to continue to move this Board's regulation forward. This rulemaking will therefore be withdrawn. Once the concerns with the federal rule are resolved, the Board can choose to begin the rulemaking process again. A proposed rulemaking would need to be drafted and move through the regulatory review process from the beginning.

Laura Edinger, Policy Office Regulatory Coordinator, explained that every regulation has a date by which it will be considered withdrawn if it does not move forward in the regulatory review process. If the regulation is not delivered to the Independent Regulatory Review Commission (IRRC) within two years of the end of the public comment period, the regulation is automatically deemed withdrawn.

The Board was advised that it could either vote on a motion to formally withdraw this regulation or it could wait until the two years are up next month and it is automatically deemed withdrawn.

Ron Bowersox made a motion to withdraw this rulemaking until such time as the federal regulation is implemented and the Board has time to evaluate the implementation of the federal regulation in Pennsylvania. Once that occurs, the Board would like to revisit this rulemaking. Chuck Shaynak seconded this motion, which was unanimously approved by the Board.

UPDATE ON FINAL SENSITIVE GROUND FAULT RULEMAKING:

Acting Chairman Stefanko provided an update on this regulation. The Board adopted the proposed regulation in September of 2016, and the rule was published on March 18, 2017, opening a 30-day public comment period, which ended on April 17, 2017. IRRC then had its 30-day review period and provided comments on the regulation on May 17, 2017. This Board adopted the final rulemaking on September 5, 2017. IRRC subsequently approved the regulation at its November 16, 2017, public meeting. The regulation was reviewed and approved by the Office of Attorney General and was published on January 13, 2018, making the rule effective.

With the finalization of this regulation, the Bureau of Mine Safety confirmed to Acting Chairman Stefanko that the Chapter 208 regulation booklet and Federal Reference regulation booklets will be updated.

UPDATE AND DISCUSSION – REPORTABLE ACCIDENTS:

At the last meeting, the Board received a report from the subcommittee on Reportable Accidents and had plans to schedule a meeting with DEP legal counsel to provide clarification. The subcommittee met recently and Acting Chairman Stefanko invited a subcommittee member to report on the outcome of the meeting.

John Gallick stated that agreement had not been reached among members of the Board and DEP regarding item number 17 in the Reportable Accidents guidance. Ron Bowersox concurred. Bureau of Mine Safety Director Craig Carson stated that the Bureau prefers that the guidance not be amended, referencing the Pennsylvania Supreme Court ruling on which DEP bases this guidance.

Acting Chairman Stefanko explained the Board of Coal Mine Safety's broad authority under the Act to promulgate regulations that are necessary or appropriate to implement the requirements of this act and to protect the health, safety and welfare of miners and other individuals in and about mines. He reminded the Board that the level of safety is ultimate and paramount and then asked how the Board wanted to proceed.

John Gallick proposed to include this item on the agenda for the next full Board meeting and have one final conversation on accident reporting. Ron Bowersox agreed that another subcommittee meeting was not necessary.

Joseph Zelenko noted that the first 16 items on the Reportable Accident list are events that have already occurred, but number 17 does not describe an event that has happened. An unplanned event that has the potential to cause an injury is quite broad. He asked if there was something that could be revised in numbers one through 16 that would cover an unplanned event. Ron Bowersox noted that a cut through at Emerald that was not called in to the State and a bad accident that was challenged were both discussed at the subcommittee meeting. He expressed concern for miner safety and how moving forward with an amendment to the guidance may compromise that.

DEP Counsel Matthew Kessler referred to the Pennsylvania Supreme Court case that ruled on accident reporting. Chuck Shaynak stated that, because number 17 is not clear, it could be left open to interpretation to every miner employed by the state of PA which puts miners in an unfair position.

After further discussion, the PCA agreed to provide additional information to the Board so that this topic can be discussed at the June 5 meeting.

UPDATE AND DISCUSSION – EMT/EMR LEGISLATIVE PROPOSAL:

Acting Chairman Stefanko stated that the Board discussed this legislative proposal at both its March and September meetings last year. At the September 2017 meeting, as recorded in the minutes, Mr. Will Dando explained that the bill was introduced as House Bill 1341. The original bill was introduced including the language that the Board had agreed upon. The House Environmental Resources and Energy Committee held a hearing in mid-June 2017 on the bill. It was amended in the House Committee to also include the option to use advanced EMTs. That would open all levels of certification under paramedic to be recognized underground. An advanced EMT would be a step above an EMT, but not as advanced as a paramedic. On June 26, 2017, the full House of Representatives voted 196-0 in favor of the bill. The legislation is currently with the Senate. The last reported action was first consideration by the Senate on January 30, 2018.

Will Dando informed the Board that the legislation is currently on the calendar in the Senate when they reconvene on April 19.

DISCUSSION – MINER CERTIFICATION:

Acting Chairman Stefanko brought up three issues relating to the Commonwealth's miner certification program. The Bureau of Mine Safety is moving to certify PA miners electronically. This would incorporate the process to apply, be scheduled and pay online. The question arose as to whether this would be a burden on hourly employees to travel to New Stanton rather than be tested

at the mine. Director Carson relayed that other States conduct testing in this manner. John Stefanko explained that this would allow the certification process to be more consistent. Chuck Shaynak asked if the electronic testing could be done nearer the location of the mine and have questions specific to the mine, testing miners on what they will be faced with at the mine they are working. Specific questions (longwall, track) are not currently on the miner certification exam.

Director Carson explained that the testing equipment is located in New Stanton. He also stated that DEP would support having a member from the Board assist with question selection and invited the Board members to go to New Stanton office and observe the test and facilities. Ron Bowersox questioned the decision to make miner certification exams electronic. Director Carson replied that it would free up the mine inspector to perform his inspection duties. He explained that the operator would be required to verify the applicant's experience prior to taking the exam.

The Board requested that DEP provide an outline of how this process would work.

Acting Chairman Stefanko also relayed that DEP is looking to adjust the certification fees to cover DEP's costs.

At the last meeting of the Board in September, as recorded in the minutes under Other Business, Bureau of Mine Safety Director Carson requested that the Board review and discuss the following sections of the Pennsylvania Bituminous Mining Law pertaining to miner certification:

Section 205. Qualifications for certification as miners.

(2) No individual shall be qualified to take the examination unless the individual produces evidence of having had not less than one year's experience in bituminous coal mines.

Section 202. Qualification for certification.

(a)(ii) For each certification category in subparagraph (i), a minimum of two years' experience must have been in a working section.

Prior to 2009, the Pennsylvania Bituminous Mining Law stated that the one year of practical experience would be in a 'Pennsylvania' mine. This amendment was made because out-of-state miners, who were qualified and had transfer rights, needed the appropriate documentation to allow them to mine in Pennsylvania. Director Carson explained that 138 miners had come to PA mines from other states and so did not have the experience or understanding required to maintain safety for all miners in PA mines. Requiring the miners to work for a year in a PA mine would give them time to adjust to PA laws and culture. Director Carson would like to see Section 205(2) changed to include one year of experience in a 'Pennsylvania' bituminous coal mine before they can test and Section 202 (a)(ii) to include a minimum of one year of experience in a 'Pennsylvania' working section.

Acting Chairman Stefanko proposed that the Bureau develop an outline including a proposal for the electronic miner certification process, adjustment of fees and potential draft language of Sections 202 and 205.

OTHER BUSINESS:

Allison Gaida is retiring on March 30 after 40 years with the Bureau and was recognized and thanked for her dedication to the Board of Coal Mine Safety.

Acting Chairman Stefanko requested that the Board keep in mind they reason they are here and to consider regulations to be brought up at the next meeting.

PUBLIC COMMENTS:

Art Brower brought up the MSHA Alert on the Proximity Detection Systems Installation Deadline of March 16, 2018. Acting Chairman Stefanko read the alert to the Board.

Acting Chairman Stefanko asked the members of the public in attendance if they would like to provide any other comments. None were voiced.

ADJOURNMENT:

With no further business to discuss,

Chuck Shaynak made a motion to adjourn the meeting. Jim Sabella seconded this motion, which was unanimously approved by the Board.

The meeting adjourned at 11:23 a.m. The next Board meeting will be held on June 5, 2018, at 10 a.m. at the DEP Cambria Office in Ebensburg.