

MINUTES
BOARD OF COAL MINE SAFETY
January 14, 2009 - Uniontown, PA

BOARD MEMBERS PRESENT

J. Scott Roberts, Alternate Chairman, Deputy Secretary, Department of Environmental Protection

Robert Penigar, Rosebud Mining

John Gallick, Foundation Coal Corporation

Dave Hudson, ConsolEnergy Corporation

Ron Bowersox, United Mine Workers of America

James Sabella, United Mine Workers of America

Frank Reidelbach, United Mine Workers of America

DEPARTMENT STAFF PRESENT

Joseph Sbaffoni, Director, Bureau of Mine Safety

Marc Roda, Attorney, Office of Chief Council

Daniel Lapato, Executive Policy Specialist, Office of Policy and Communications

Allison Gaida, Administrative Assistant, Bureau of Mine Safety

CALL TO ORDER AND APPROVAL OF MINUTES

J. Scott Roberts, alternate for Chairman John Hanger, called the meeting to order at 10:05 a.m. in the Bureau of Mine Safety conference room, Fayette County Health Center, 100 New Salem Road, Uniontown, PA. Role call was made. All seven members of the Board were present and a quorum existed.

The Board considered its first item of business -- the January 7, 2009, meeting minutes. With no corrections or amendments, J. Scott Roberts called for a motion to adopt the minutes of the January 7, 2009, meeting.

Bob Penigar moved to adopt the minutes. Ron Bowersox seconded the motion, which was unanimously approved by the Board.

Administrative Clarification

Advisory committee liaison Allison Gaida briefly explained the form the Board is to complete for per diem submittals. Cathy Dunn, travel arranger for the Bureau of Mine Safety, provided brief instructions on submitting travel expenses. J. Scott Roberts informed the Board that the Department would be available for further clarification and assistance after the meeting.

Discussion on By-Laws

J. Scott Roberts opened the floor for the Board to discuss whether they would like to develop by-laws.

John Gallick made a motion that we not incorporate by-laws at this time. If meetings in the future appear to require the Board to revisit having by-laws, the issue will be opened at a later date. Bob Penigar seconded this motion. The motion was accepted with a 6-1 vote. Ron Bowersox opposed the motion.

Determination Whether to Promulgate Regulations Providing for Exceptions to Section 258(A.2):

J. Scott Roberts opened the floor for discussion on whether to promulgate regulations providing for exceptions to Section 258(A.2).

John Gallick made a motion that the Board agree to promulgate regulations providing for exceptions to Section 258(A.2) for the following exceptions:

- (1) Bleeder entry development,**
- (2) Development of longwall set up entries,**
- (3) Development of longwall recovery entries, and**
- (4) Start-up of a working section off mains or submains entries.**

While the Board develops the regulations for the above exceptions, any operator choosing to operate under these exceptions shall make readily available a self-propelled transport vehicle with rubber tires, or an alternative unit, that is capable of being attached to or carried by a self-propelled unit in the working section for the transportation of sick or injured miners.

Dave Hudson seconded this motion.

With this motion on the table, Scott Roberts opened the floor for discussion. A hard copy of John Gallick's motion was distributed to the Board. James Sabella requested a definition of 'alternative unit.' John Gallick explained that it could be a skid or pod in scoop or attached to scoop or any device that provides the equivalency of a rubber-tired vehicle. Ron Bowersox then requested that someone from the department illustrate to the definition of 'bleeder entry, longwall entry, etc.'

Bureau of Mine Safety Director Joseph Scaffoni provided an explanation using examples of mine maps to identify bleeder entry development, development of longwall set up entries, development of longwall recovery entries, and startup of a working section off mains or submains entries.

Discussion among Board members took place on what the average number of feet would be for the above exceptions, and the approximate distances from the faces and loading points to the track locations.

J. Scott Roberts requested an explanation from Board members on their interpretation of the fourth exception in Section 106.5, startup of a working section off mains or submains entries. Dave Hudson described ConsolEnergy's practice for section startup, and discussion took place on this issue.

At this time, John Gallick requested a caucus. The Board agreed to take a break for private discussion at 10:48 a.m. Members of the Board reconvened at 11:17 a.m. and the meeting continued.

J. Scott Roberts asked if there were any questions on the remaining portion of John Gallick's motion. Ron Bowersox stated that he still did not agree on the definition of 'readily available' as written in Section 106.5(A). It was his understanding that the Governor had said that the vehicle would be exclusively for sick or injured persons. John Gallick explained that the Governor's comment pertaining to this had been in response to a comment on a stretcher. The rule says 'transport vehicle' and John Gallick did not believe it was to be used exclusively for injured people.

James Sabella referenced Acting Secretary John Hanger's statement from the first meeting that the Board was established for the safety of all miners and inquired as to why mines that do not have track would not have a safety vehicle. He also stated that playing on words would not be a safety issue for miners. Mr. Sabella asked if regulations for mines without tracks could be brought up a later meeting to which Scott Roberts replied that regulations could be promulgated for non-track mines.

Deputy Secretary Roberts noted for the record that a motion had been made and seconded and Board action should proceed.

At this time, George Ellis, President of the Pennsylvania Coal Association, requested to speak to the Board. He provided his view of what had been said at the Governor's meeting on this issue. J. Scott Roberts pointed out that the law was enacted and signed by Governor. The Board now has to deal with what the law actually says.

With that said, he asked if there was any further discussion that had not been made regarding the motion. Hearing none, J. Scott Roberts requested that Board members vote on the above motion.

Bob Penigar, Dave Hudson, and John Gallick voted in agreement with the motion, while Ron Bowersox, Frank Reidelbach, James Sabella, and J. Scott Roberts voted in opposition to the motion. The motion failed with a 4-3 vote. The Board, at this point, is not going to promulgate regulations providing for exceptions, and the Board's obligation under Section 106.5 has been fulfilled.

Prioritize Development of Regulations Required in Section 106.1:

J. Scott Roberts read Section 106.1(b) and called for a motion for the Department to come back to the Board with items to be included for consideration.

Dave Hudson made the motion for the Board to direct the Department to put together a guidebook of what federal regulations were in effect as of the effective date of the statute but not included in the interim mandatory safety standards, as well as providing for any new standards, except for standards concerning diesel equipment, promulgated after the effective date of this section. The motion was seconded by James Sabella, and was unanimously approved by the Board.

The Department will provide this information to the Board at least two weeks prior to the next scheduled meeting.

Emergency Shelters and Chambers

Two weeks before the next meeting, the department will also provide a side-by-side comparison of the recently promulgated federal standards for emergency shelters and chambers with the items that the Board is to consider for emergency shelters or chambers. This is in regard to Section 106.1(h.3) stating that, if MSHA fails to promulgate regulations regarding emergency shelters and chambers, the Board shall promulgate regulations.

New Business:

Automated External Defibrillators (AEDs) in Mines:

Ron Bowersox distributed a November 12, 2008, letter addressed to Ed Yankovich, Jr., International Vice President, UMWA District #2, from State Representative Timothy Mahoney. Representative Mahoney's letter addresses a concern brought to his attention from Karen Hampton on the lack of AEDs in Pennsylvania mines. J. Scott Roberts added this issue as an agenda item for the next meeting.

At this time, J. Scott Roberts opened the floor for the audience to comment. He recognized Mr. Hank Moore who commented on the Board's authority to establish fees. He also suggested looking only at post-Sago federal regulations due to the timeframe. J. Scott Roberts stated that his comments were appreciated and relayed his confidence that the Bureau of Mine Safety will provide an accurate. Bureau of Mine Safety Director Joseph Scaffoni stated that he did not feel it would be appropriate for the department to pick and chose what regulations should be provided to the Board, and that it should be the Board's decision to prioritize from the entire list federal regulations. The Bureau should distinguish which ones are part of the interim standard and provide the rest to the Board.

Future Meeting Dates and Locations:j

Section 106 states that the Board shall meet at least twice during each calendar year or more often, if necessary.

Ron Bowersox made a motion to have quarterly meetings, at a minimum, through 2009. Frank Reidelbach seconded this motion. All Board members were in favor and the motion carried unanimously.

Meeting dates and location for 2009 were agreed upon. Meetings will be held in the Fayette County Health Center in Uniontown, PA, beginning at 10 a.m. on the following dates:

June 3, 2009

September 9, 2009

December 9, 2009

Frank Reidelbach made a request to the J. Scott Roberts that the Board members sit wherever they want at future meetings. J. Scott Roberts stated that he appreciated this request and will take it into consideration for future meetings.

ADJOURNMENT:

With no further business to discuss, J. Scott Roberts called for a motion to adjourn the meeting.

Bob Penigar moved to adjourn the meeting. Frank Reidelbach seconded this motion.

Meeting adjourned at 12:06 p.m.