

**Notice of Final Rulemaking
Department of Environmental Protection
Board of Coal Mine Safety
25 Pa. Code Chapter 208
Underground Coal Mine Safety**

Order

The Board of Coal Mine Safety (Board) by this order creates 25 Pa. Code Chapter 208 (relating to underground coal mine safety). These regulations establish safety standards relating to: belt conveyor flammability; the design, installation and maintenance of mine seals for abandoned areas; escapeways; emergency response; and, self-contained self-rescue devices. These regulations principally incorporate by reference safety standards adopted by the United States Department of Labor, Mine Safety and Health Administration (MSHA) found in 30 CFR Part 75 (relating to mandatory safety standards—underground coal mines). The MSHA regulations/standards being incorporated by reference implement requirements of the Mine Improvement and New Emergency Response Act of 2006, Pub. L. 109-236, 120 Stat. 493 (2006) (MINER Act), which amended various provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 to 965.

This order was adopted by the Board at its meeting of _____.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Joseph Sbaffoni, Director Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown PA 15401, (724) 439-7469; or Richard S. Morrison, Assistant Director, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This final rulemaking is available electronically through the Department of Environmental Protection (DEP) web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

These regulations are being promulgated under the authority of sections 106, 106.1 and 106.2 of the Bituminous Coal Mine Safety Act, 52 P.S. §§ 690-106, 690-106.1, and 690-106.2 (BCMSA) and section 1917-A of The Administrative Code of 1929, 71 P. S. § 510-17.

D. Background and Purpose

At the national level, MSHA regulates mine safety under the authority of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. §§ 801 to 965 (Mine Safety Act). In 2006, the United States Congress amended the Mine Safety Act by enacting the MINER Act. The MINER Act addresses safety issues that were raised by fatal mine accidents at the Sago and Alma Mines in West Virginia, and the Darby Mine in Kentucky, and the Act directed MSHA to develop regulations implementing its provisions. In addition, when adopting the Consolidated Appropriations Act of 2008, Pub. L. 110–161, 121 Stat. 1844 (2007), Congress included a provision directing MSHA to adopt new flame-resistance standards for belt conveyors. In accordance with these statutory mandates MSHA promulgated regulations addressing the flammability of belt conveyors, the strength of seals for abandoned areas, escapeways, refuge alternatives, post-accident breathable air, communications, tracking and mine rescue teams. The MSHA regulations are found in 30 CFR parts 1 through 199, and the operating requirements for underground coal mines are found specifically in 30 CFR Part 75.

The federal Mine Safety Act preempts state laws or regulations that are less stringent than or conflict with MSHA standards. *See* 30 U.S.C § 955. Unlike with some other federal statutes, a state cannot obtain primary authority to enforce the Mine Safety Act within the state’s jurisdiction. As a result, a number of states have maintained an independent underground coal mine safety program which implements the state’s mine safety laws, particularly states like Pennsylvania with a long history of underground coal mining. The Commonwealth of Pennsylvania has been regulating safety at underground bituminous coal mines since 1889. *See* An Act to Provide for the Recovery of the Bodies of Workmen, Act of May 9, 1889 (P.L. 154, No.171). In 2008, the General Assembly enacted BCMSA, which constitutes the first significant update of Pennsylvania’s underground bituminous coal mine safety laws since 1961. A fundamental purpose of BCMSA is to establish and promulgate improved mandatory health and safety standards to protect the health and safety of miners and others in and about underground coal mines located in this Commonwealth. *See* 52 P.S. § 690—103.

One of the significant changes made by BCMSA is to establish a rulemaking process that will enable the expeditious updating of the interim mandatory health and safety standards contained in BCMSA, and will otherwise help to protect the health, safety and welfare of miners and others in and about mines going forward. The General Assembly established the Board of Coal Mine Safety to promulgate regulations implementing BCMSA. This 7-member board consists of the Secretary of DEP, who serves as Chair, and six Board members—three representing the viewpoint of mine workers and three representing the viewpoint of underground bituminous coal mine operators. *See* 52 P.S. § 690—106.

In adopting BCMSA, the General Assembly recognized that the Pennsylvania Bituminous Coal Mine Act has become outdated and lacks an effective mechanism to modify existing standards or to adopt new safety standards to address changes in technology or recognized hazards. To rectify this problem BCMSA establishes broad authority in the Board (and DEP) to adopt regulations to either modernize safety standards in BCMSA or adopt new safety standards not contained in BCMSA. *See* 52 P.S. § 690—106. The Board was directed by the Legislature in BCMSA to consider adopting federal mine safety standards not included as

interim mandatory safety standards in BCMSA. 52 P.S. § 690—106.1. Of particular concern is the adoption of regulations implementing safety standards established by the MINER Act and the MSHA regulations implementing the MINER Act provisions. The Legislature expressly authorized the Board to promulgate regulations the Board deems appropriate to implement federal standards adopted by the MINER Act. 52 P.S. § 690—106.1(h).

In accordance with section 106 of BCMSA, this rulemaking promulgates as regulations Federal mine safety standards not included as interim mandatory safety standards in BCMSA. The rulemaking also addresses safety standards established by the MINER Act. To a great extent, this rulemaking incorporates by reference the applicable MSHA regulations. However, there are a few instances where the MINER Act regulations needed to be strengthened or clarified, and this rulemaking promulgates regulations accordingly in order to assure the safety of miners in the Commonwealth. Adopting the MSHA regulations by reference when applicable will enhance safety at underground coal mines because the potential for confusion by operators as to the appropriate safety standard is minimized. Moreover, any future changes in an MSHA regulation that has been fully incorporated by reference will take immediate effect in Pennsylvania. As a result, these regulations will remain current with the MSHA regulations.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on July 10, 2010, with a 60-day public comment period. *See* 40 Pa. Bull. 3836 (July 10, 2010). The Board received 24 comments from 4 commentators. DEP presented the draft final-form rulemaking to the Board at its meeting on December 15, 2010.

E. Summary of Changes to the Proposed Rulemaking

§ 208.1 Definitions

The final-form rulemaking makes a minor edit to the definition for “overpressure” to remove a superfluous reference to a section of the federal regulations.

§ 208.3 Access to Material

Some minor editorial changes were made to this section for purposes of textual clarity.

§ 208.11 Seals

The final rulemaking clarifies the applicability of this section. All seals installed for abandoned areas after the effective date of the regulation must be designed, constructed and installed to withstand an overpressure of at least 120 psi. All existing seals with an overpressure rating of less than 120 psi seal will not have to be replaced but will require monitoring of the atmosphere in the abandoned area. This regulation is more stringent than the MSHA regulation which permits a 50 psi standard if the atmosphere in the abandoned area is and remains inert as demonstrated by an operator’s monitoring of the atmosphere in the abandoned area.

Subsection (b) of this section has been modified to make clear that an individual designated by the mine operator who is adequately trained and is capable of initiating the emergency response plan shall be located on the surface in the event that the designated responsible person is not available. The proposed regulation required that a designated individual with the same training in emergency procedures as the responsible person had to be located on the surface during all shifts. Comments pointed out that this requirement would lead to unnecessary redundancy, and potential confusion. The change clarifies the intent of the regulation, which is to assure that a person capable of initiating the emergency response plan is located on the surface in the event the designated responsible person is not available to conduct the emergency response procedures.

F. Summary of Comments and Responses on the Proposed Rulemaking

Access to material.

Section 208.3 authorizes DEP to obtain copies of the material an operator submits to MSHA pursuant to the regulations incorporated by reference in this Chapter. One commenter questioned the need for this regulation since the Act contains provisions regarding materials that must be provided to the DEP and to miner representatives. For the most part, DEP will be accepting MSHA's approval of seals and equipment. There are instances where DEP will need copies of this information to approve a plan or to raise concerns to MSHA for its consideration as part of its review of the requested approval. The Department will provide this information to an official representative of the miners as requested, unless specified otherwise in the chapter.

Seals

The Board received several comments concerning the proposed rulemaking's elimination of the MSHA option of a 50 psi seal standard if the operator monitors the atmosphere in the abandoned area and the atmosphere remains inert. The proposed regulations would have required mine operators to design, construct and maintain all seals to withstand an overpressure of at least 120 psi.

The atmosphere in these abandoned areas does not always remain inert and, moreover, the monitoring system only measures the atmosphere at or near the seal. It does not monitor the atmosphere throughout the abandoned area. Therefore, there is significant uncertainty as to whether the atmosphere throughout the abandoned area is actually inert. This creates the risk of a dangerous explosion that blows out the seals; in fact, the explosion at the Sago Mine in 2006 was estimated to have forces of 90 psi. The Board has determined that allowing the use of 50 psi seals could potentially compromise the safety of miners and the standard should be more stringent going forward. Consequently, the final-form rulemaking would require mine operators, commencing after the effective date of final rulemaking, to design, construct, and maintain all new seals to withstand an overpressure of at least 120 psi. All existing seals with an overpressure rating of less than 120 psi seal will not have to be replaced but will require

monitoring of the atmosphere in the abandoned area.

Construction and repair of seals.

Section 208.13 incorporates by reference the provisions of 30 CFR § 75.337, MSHA's standards for approving the installation and repair of seals; one commenter questioned the need for this section.

The incorporation by reference ensures that DEP and MSHA will be enforcing the same standards to ensure the safe installation and repair of seals. The only difference between this regulation and the MSHA regulation is that a copy of the information to justify welding, cutting or soldering within 150 feet of a seal is to be submitted, if applicable, to the representative of the miners. This enables the persons who could be placed at risk by the welding, cutting or soldering activity to have an opportunity to comment on the adequacy of the operator's proposal.

Training

Section 208.14 establishes the training requirements for persons involved in the installation or repair of seals. It incorporates by reference the provisions of 30 CFR 75.338 (relating to training). A commenter noted that the MSHA rule concerning the training of senior management is ambiguous and it is not clear in that rule who must in fact be trained and when they must be trained. Commenter suggested that some consideration be given to clarifying this aspect of the regulation.

To eliminate any confusion, DEP will use the MSHA guidance policy on who must be trained and when they must be trained.

Escapeways

The Board received several comments pertaining to escapeways which disagreed with the distinction made in the proposed regulations in § 208.21(a) and the MSHA regulation. The proposed regulations do not incorporate the language in 30 CFR 75.380(c) allowing the two escapeways to end in one multiple compartment shaft or slope separated by walls.

BCMSA directly addresses mine openings or outlets. *See* 52 P.S. 690-274. The provisions of BCMSA specifically require that the two intake openings or outlets to the surface shall not be at a common shaft, slope or drift opening. BCMSA also states that the openings or outlets shall have a distinct means of egress available for use by the employees. For this reason, the regulations at § 208.21(a) do not incorporate by reference the language in 30 CFR 75.380(c) that allows two escapeways to end in one multiple compartment shaft or slope separated by walls. The regulations adhere to the statutory requirement in BCMSA. Both the state and the federal regulations require no fewer than two intake openings or outlets to the surface from every seam of coal being worked. DEP will apply escapeway requirements in accordance with MSHA regulations to primary and secondary escapeways designated by mine operators.

Belts

Section 208.32(a) incorporates by reference 30 CFR 75.1731 so that DEP will be using the MSHA belt and belt entry maintenance requirements. Subsection (b) makes it clear that the belt conveyor pre-shift and fixed interval inspections address compliance with these maintenance requirements. One commentator does not believe this provision is necessary, however, these requirements are common sense actions that will minimize the risk of a conveyor belt fire.

Emergencies

Section 208.41(a) incorporates by reference 30 CFR 75.1501 (relating to emergency evacuations). The proposed regulation required that a designated individual with the same training in emergency procedures as the responsible person had to be located on the surface during all shifts. The Board received several comments on this section which pointed out that this requirement would lead to unnecessary redundancy, and potential confusion.

The Board agrees with the commenters that this section should be revised to express the intent more clearly. Subsection (b) of this section has been modified on final rulemaking to make clear that an individual designated by the mine operator who is adequately trained and is capable of initiating the emergency response plan shall be located on the surface in the event that the designated responsible person is not available. The change clarifies the intent of the regulation, which is to assure that a person capable of initiating the emergency response plan is located on the surface in the event the designated responsible person is not available to conduct the emergency response procedures.

G. Benefits, Costs and Compliance

Benefits

The final-form regulations enhance mine safety by ensuring that abandoned areas are isolated from the working mine, by reducing the possibility of belt conveyor fires and by enhancing the miners' ability to survive a mine fire, cave-in, or the inundation of a mine by gas or water. The Department will be enforcing the MSHA requirements concerning emergency response and emergency response training, escapeways, self-contained self-rescue devices, and refuge alternative requirements.

Compliance Costs

This rulemaking does not impose any new compliance costs. For the most part this rulemaking imposes standards already imposed by MSHA.

Compliance Assistance Plan

The Department will work with the Pennsylvania Coal Association to assist coal mine operators in complying with these regulations. In addition, compliance assistance will be provided by the mine inspectors as part of their inspections of mines.

Paperwork Requirements

The only new paperwork requirement imposed by this rulemaking is that operators will be required to submit to the Department applications to conduct welding, cutting or soldering within 150 feet of a seal.

H. Pollution Prevention

The rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multi-media pollution prevention approach of existing requirements in 25 Pa. Code.

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 30, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa. Bull. 3836 (July 10, 2010) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____ this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pennsylvania Code §§ 7.1 and 7.2.

(2) A public comment period was provided, Notice was submitted to the operator of each mine and where applicable the representative of the miners at the mine as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 40 Pa. Bull. 3836 (July 10, 2010).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 25 Pennsylvania Code, Chapter 208, are promulgated to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

BY:

John Hanger
Chairman
Board of Coal Mine Safety