

**MINUTES**  
**BOARD OF COAL MINE SAFETY**  
**DEP Cambria Office**  
**December 10, 2019 – 10 a.m. – Ebensburg, PA**

**VOTING BOARD MEMBERS PRESENT**

John Stefanko, DEP, Deputy Secretary for Active and Abandoned Mining Operations  
Bobby Bodenschatz, PCA  
Ron Bowersox, UMWA  
Todd Moore, PCA  
Frank Reidelbach, UMWA  
Joseph Zelanko, PCA

**DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT**

Richard Wagner, DEP, Director, Bureau of Mine Safety  
Mary Martha Truschel DEP, Office of Chief Counsel  
Joe Iole, DEP, Regional Counsel  
Matt Kessler, DEP Office of Chief Counsel  
Laura Edinger, DEP, Policy Office  
Kate Cole, DEP, Policy Office  
Jim Schuessler, DEP, Bureau of Mine Safety  
Chas Washlack, DEP, Bureau of Mine Safety  
Arthur Brower, DEP, Bureau of Mine Safety  
Dustin Mowery, DEP, Bureau of Mine Safety  
Peggy Scheloske, DEP, Bureau of Mine Safety

**OTHERS PRESENT**

Will Dando, PCA  
Hank Moore, Fisher Phillips  
Don Foster, LCT

**CALL TO ORDER AND APPROVAL OF MINUTES**

John Stefanko, DEP Deputy Secretary for Active and Abandoned Mining Operations and Acting Chairperson of the Board of Coal Mine Safety, called the meeting to order at 10:00 a.m. in the DEP Cambria Office, Conference Room 1A/B in Ebensburg.

The Board considered its first item of business which was approval of the June 11, 2019, meeting minutes.

**Joe Zelanko moved to adopt the minutes to the Board. Frank Reidelbach seconded the motion. The motion was unanimously approved by the Board, and the minutes were adopted as presented.**

## **Miner Certification Plan Proposal**

Acting Chairperson Stefanko reported at the last meeting that the Department was evaluating recommendations regarding the miner certification process. A document titled “Miner Certification Concept” was included in the meeting materials, and Acting Chairperson Stefanko asked Bureau Director Wagner to review the concept with the members present.

Bureau Director Wagner reviewed the concept and asked for questions from the members. Mr. Wagner explained that the Department was working on who would administer the exam and further clarified that the scores would be distributed to each applicant individually. The goal is to have an electronic examination available for testing individuals after the inspector does his basic questioning. Acting Chairperson Stefanko stated that when the electronic version is available, the Bureau will provide a demonstration for the Board.

Bureau Director Wagner reported that the Bureau is currently working on the bank of questions to be used in the electronic examination.

Acting Chairperson Stefanko asked if there were any further questions and committed to presenting a final process document at the next meeting. There were questions regarding whether the new fees would be included in the process. The Department will have counsel review what the Board can and cannot do regarding implementing fees, with the understanding that fees can be imposed intermittently if rulemaking is involved. A proposal will be presented at the next meeting.

## **Reportable Accidents**

Acting Chairperson Stefanko provided an update on this to the members. With the transition of the new Bureau Director, implementation had been delayed. He asked if anyone would like to change anything that was presented at the last meeting. There were no changes requested, and the members agreed that the recommendations for the revision from the last meeting be forwarded to amend the current Department Technical Guidance Document.

## **Development of New Regulation – e-cigarettes**

Acting Chairperson Stefanko noted that he would like to have a final document for the proposed regulation at the next meeting and referred the members to the draft document included in the meeting materials. He asked if the members had any questions or comments on the draft document. Laura Edinger and Joseph Iole explained that all comments from the last meeting were taken into consideration when drafting the document and that the penalty language was changed to adopt the Federal penalties that are updated on a regular basis. There was also discussion about how to describe smoking materials.

Counsel Truschel informed the members that the penalty listed in this proposal is much lighter than imposing a sanction, which is the past practice of the department under Sections 268 and 500. The members noted that this was not their intent. Counsel Truschel suggested that references to a civil penalty should not be included, because this can be addressed under Section

500 with an administrative order.

There was discussion that not all miners are aware that e-cigarettes or vaping devices are considered “smokers’ articles” and that it would be important to educate the miners to make them aware of the consequences. It was suggested that a good avenue for this education would be through their annual refresher training.

Additionally, Bureau Director Wagner noted that Section 268 only addresses civil penalties for certified mine officials and mine operators and does not address those miners who are considered apprentice miners and have not completed 12 months underground. Counsel Truschel added that the legislature made this choice, so that it was at the discretion of the Department. The legislature did not give the Department or Board authority to impose a civil penalty. The Board can alter Chapters 2 & 3 safety standards; but not Chapter 5 enforcement of law. The only remedy for this is under Section 501, banning someone from working in Pennsylvania.

Discussion ensued regarding recordkeeping for those miners who are not certified in Pennsylvania and who are in their first year as an apprentice miner and how they would be identified to other employers or mine operators by the Bureau. West Virginia’s “safety sensitive” certification process was discussed. Acting Chairperson Stefanko said that this issue will be discussed further by the Department.

There was also discussion regarding where to include vaping devices, with electronic devices or smoking materials.

Acting Chairperson Stefanko will ask the Department’s legal team to investigate and create a simplified proposal to make sure we cover devices and provide information as to the legality of the addition of a civil penalty and revocation for those miners who are in the 0-12-month period. This will be presented at the next meeting for the Board to consider.

### **2020 MEETING DATES:**

The Board scheduled the 2020 meetings on the following dates:

March 10, 2020  
June 9, 2020  
September 1, 2020  
December 8, 2020

All meetings will be held at 10 a.m. in Conference Room 1A/B in the Ebensburg DEP Office.

### **OTHER BUSINESS**

None.

### **PUBLIC COMMENTS**

Acting Chairperson Stefanko asked the members of the public in attendance if they would like to

provide any other comments. There were no public comments.

**ADJOURNMENT**

With no further business to discuss,

**Ron Bowersox made a motion to adjourn the meeting. Joseph Zelanko seconded this motion, which was unanimously approved by the Board.**

The meeting adjourned at 11:27 a.m. The next Board meeting will be held on March 10, 2019, at 10 a.m. at the DEP Cambria Office in Ebensburg.