

MINUTES
BOARD OF COAL MINE SAFETY
January 7, 2009 - Harrisburg, PA

BOARD MEMBERS

John Hanger, Chairman, Acting 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

J. Scott Roberts, Deputy Secretary, Mineral Resources Management
Joseph Sbaffoni, Director, Bureau of Mine Safety
Marc Roda, Attorney, Office of Chief Council
John Stefanko, Executive Assistant, Mineral Resources Management
Robert Maiden, Executive Assistant, Office of the Secretary
Kelly J. Heffner, Director, Office of Policy and Communications
Daniel Lapato, Executive Policy Specialist, Office of Policy and Communications
Alan L. Martin, Chief, Bituminous Electrical Safety Division, Bureau of Mine Safety
Dennis K. Walker, Chief, Bituminous Mine Safety, Bureau of Mine Safety
Allison D. Gaida, Administrative Assistant, Bureau of Mine Safety

Chairman John Hanger called the first meeting of the Board of Coal Mine Safety to order at 1 p.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg. Chairman Hanger welcomed the Board and introduced Deputy Secretary J. Scott Roberts, who will represent the Department on the Board in his absence. Introductions were made around the table of Board members and DEP staff present. Chairman Hanger gave a brief background of the history of the Pennsylvania bituminous mining laws and recognized those who were instrumental in bringing Act 55 to completion.

Following Chairman Hanger's introductory remarks, the floor was opened for any other remarks. Appreciatory remarks were made by Board members Dave Hudson and John Gallick.

Charge of the Board:

Scott Roberts read the charge of the Board in Section 106 (a), Establishment. "The Board of Coal Mine Safety is established and shall develop all of the following:

- (1) Proposed amendments to the interim mandatory safety standards.
- (2) Additional regulations with respect to mine safety if the board determines that existing federal and state regulations do not adequately address a specific hazard.
- (3) Other regulations as specifically authorized under this act."

Discussion/Decision on By-Laws:

Deputy Secretary Scott Roberts explained the purpose of by-laws and offered the Department's assistance should the Board decide to develop by-laws. He explained that by-laws cannot conflict with the Sunshine Act. Examples of by-laws from other DEP advisory councils will be provided to the Board by the end of the week for their review. This item will be discussed at the next meeting.

Explanation of Administrative Procedures:

Advisory committee liaison Allison Gaida, distributed the State Ethics Commission and Governor's Office required "Statement of Financial Interest" forms to the Board and reviewed the procedure for completion. The forms are to be completed and returned by January 30. Scheduling of meetings and travel and per diem compensation was also explained. Allison will work with individual Board members as necessary to complete the forms for reimbursement. Web link information was provided for the Department's Public Participation site and the Mine Safety and Health Administration's Code of Federal Regulations (30 CFR). Hard copies of the federal regulations will be ordered for each Board member.

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

Section 106.5. Track Distance states that, "within 14 days of the initial meeting of the Board, the Board shall make a determination whether to promulgate regulations providing for exceptions to Section 258(A.2). If the Board decides to promulgate regulations providing for any of the exceptions described in Subsection (b), any exceptions as approved by the Board for proposed rulemaking shall become and remain in effect until the completion of the rulemaking process. Any exceptions approved by the Board shall require the operator to make readily available a self-propelled transport vehicle with rubber tires in the working section for transportation of sick or injured miners." Exceptions that shall be considered by the Board pursuant to subsection (A) are: (1) bleeder entry development, (2) development of longwall setup entries, (3) development of longwall recovery entries, and (4) startup of a working section off mains or submains.

Ron Bowersox, United Mine Workers of America, requested clarification for the term 'readily available'. Chairman Hanger explained that the Board does not have authority to change this language and noted Mr. Bowersox's important comment. He directed the discussion back to the initial agenda item of whether the Board wants to promulgate regulations that would provide for exceptions. Mr. Bowersox explained his view that an emergency vehicle should not be used for anything other than emergencies and stated how this determination would affect the decision to promulgate regulations that would provide for exceptions.

Discussion on Mr. Bowersox's comment ensued. John Gallick, Foundation Coal Corporation, attempted to interpret 'readily available.' He said that the phrase 'emergency vehicle' is found no where in the new law. It is called a self-propelled rubber tired vehicle to transport sick or injured miners.

To bring the discussion back on track, Chairman Hanger suggested the Board consider the following until the next meeting. There may some exceptions to Section 258(A.2) that would be in interest to both the United Mine Workers of America and the Pennsylvania Coal Association, and, with the attitude that, if a conversation was held about exceptions, then Mr. Bowersox's concerns involving the definition of 'readily available' would be addressed. Chairman Hanger and Scott Roberts let the Board know that they would be available to talk on this issue.

Comments were requested from public in attendance. George Ellis, President of Pennsylvania Coal Association, requested that the Board consider scheduling an additional meeting in the event that the exception issue is not resolved at the next meeting. Chairman Hanger stated that he did not favor scheduling an additional meeting as consequences have already been explained on acting or not acting on Section 106.5.

Secretary Hanger reiterated that if rules are going to be promulgated to make exceptions to Section 258(A.2), the decision must be made at the January 14 meeting. If a decision is not made to promulgate rules at the next meeting, the Board would have to go through the normal rulemaking process and changes would not take effect until the final rule is published.

The next meeting will be held on January 14 at 10 a.m. in the Fayette County Health Center in Uniontown.

Adjournment:

With no further business to discuss Frank Reidelbach moved to adjourn the meeting at 2 p.m. Robert Penigar seconded this motion.