
VIRGINIA COAL MINE SAFETY BOARD

**Department of Mines, Minerals, and Energy
Wednesday – October 25, 2006 - 8:30 A.M.**



MINUTES

VIRGINIA COAL MINE SAFETY BOARD

MEMBERS PRESENT:

- Richard Waddell
- Billy Powers
- Foster Tankersley
- David Berry
- Patti Church
- William Kiser
- Max Kennedy, Jr.
- Ernest Benko

MEMBERS ABSENT:

- Roy Jessee

OTHERS PRESENT:

- Frank A. Linkous, Chief, Division of Mines (DM)
- Bo Willis, Department of Mines, Minerals & Energy (DMME) Director
- Benny R. Wampler, DMME Deputy Director
- Tabitha Peace, DMME Policy Analyst
- Carroll Green, DM Mine Inspector Supervisor
- Mike Willis, DM Mine Safety Engineer
- David Asbury, DM Emergency Response Coordinator
- Patty Varner, Administrative Program Specialist

Meeting Called To Order

Chairman Foster Tankersley called the meeting to order. A roll call of members determined there was a quorum present. Eight of the nine members were present. A quorum requires the Chairman and four members to be present.

Chairman Tankersley called for approval for the minutes from the previous meeting of February 6, 2006. Motion was made and seconded to approve the minutes, and the Board approved the minutes. Also, the agenda for the October 25, 2006, meeting was approved.

Old Business

Chairman Tankersley's call for old business disclosed no old business to discuss.

Frank Linkous introduced and welcomed new Board member, Billy Powers, and encouraged his participation and interaction in the Board.

New Business – Status of Virginia Mine Safety Performance

Frank Linkous presented charts and data representing a five-year rolling average of occupational injuries for Virginia coal mine safety performance through June 30, 2006. This data included statistics from the Mine Safety and Health Administration some of which is reported to the Governor's office. Rolling average of 3.43 on all reportable Virginia coal mine injuries reflects the best annual rate Virginia has ever had; especially considering the 15.2% increase in Virginia coal production and most of Virginia's man hours having been worked

underground. This is attributed to good work from our mines; safe mines are productive mines. DMME's challenge is to find ways to support the coal operators and miners in continued improvements in safety performance. While satisfying the federal Miner Act of 2006 and state-imposed requirements, caution is urged in attempting to solve and manage issues related to these impositions during this critical period while continuing to focus on operational process control.

Of particular concern to DM are Virginia's fatality frequency rates. In the past five years this rate has been high in comparison to the national rate because of fewer, mostly underground man hours. To more effectively reduce the rate, DM has concentrated on the key areas of roof control and electrical. The state record has improved reflecting 0 fatalities over the past two years. Accident frequency rate trend remains good; roof falls, ignitions, inundations, and mine fires are tracked and are reduced. Safety violations issued by DM inspectors were eliminated within 48 hours of their targeted due date with a completion rate of more than 98%. The DM goal is to reduce the number of violations by determining root causes, trends or patterns for the occurrence of violations by involving the miner and operators. Violations are marked as to whether a result of a condition or practice, or both, by the inspectors, which is an important distinction in affecting reduction and elimination of violations. DM's survey questionnaire responses from operators and miners have been positive; the lowest percentage this year has been 94% satisfaction, which meets the set standard for performance. Frank advised that this feedback from those we work with and assist is valued as also is the Board's upon viewing presentations from DM.

Buchanan County Fatal Electrical Incident

Carroll Green, Mine Inspector Supervisor, presented information regarding the chargeability of a fatal electrical accident involving a Virginia contract worker employed by Nichols Construction, LLC. The victim was electrocuted while clearing a right of way underneath an overhead high voltage line located on old Permac property. The victim was clearing brush/trees from the right-of-way underneath a 12,470 volt, three phase, high voltage transmission line when he came into contact with an energized guy wire installed for stabilizing a high voltage power pole. The victim either leaned into or fell across the guy wire causing the guy wire to become detached from the log that it was tied around at ground level. The guy wire was detached from the log which created slack in the wire allowing it to come into contact with at least one phase of the 12,470 volt circuit. The victim received a shock voltage of approximately 7200 volts, phase to ground.

The fatality was declared nonchargeable by DMME on June 27, 2006, after comparison to previous fatalities, discussions with MSHA, and the fact that the victim was located off the permitted mine site area. DM had reached consensus with MSHA's District 5 level, after a review of the incident by their accident review committee. DMME held their report until after MSHA's committee preliminary report which said the accident would not be chargeable as a mine fatality. Shortly thereafter, DM released their report to Virginia OSHA. The MSHA Arlington office of solicitors has since on August 7, 2006, declared the fatality to be chargeable. DM's request for an explanation of this decision has never gotten a response.

Status of implementation of new Virginia Emergency Response Plan requirements

Carroll reported on implementation of new emergency response requirements under HB1443 (emergency response bill) in the aftermath of two recent mine explosions and a fire in other states. Other mine emergencies including gas inundations and water inundations were also addressed in the new laws. The preceding emergency response plan has been

amended to address these type mine emergencies and new statutory requirements. The process also evolved to assist industry in developing an MSHA "generic" plan which involved DM briefings with small mine operators, safety personnel and MSHA officials. MSHA managed the Part 48 components, and DM developed the firefighting and evacuation plans, templates and training materials. The end product was developed to comply with the new emergency response standards to meet MSHA's approval. DM staff developed a generic mine emergency / fire fighting plan and an emergency response plan, which was approved by MSHA, and distributed to industry officials to meet MSHA submittal deadlines. The deadline for submitting plans was May 15, 2006; DM is still in the process of auditing the plans and emergency response process at each mine for required revisions. DM has taken initiatives to ensure there are no conflicting standards with both the DM and MSHA required emergency response plans. A copy of a company's emergency response plan submittal, which illustrates well DM's concept of the new plan, was distributed to attendees.

Underground mine foreman continuing education for 2007 is being developed to address emergency response. DM staff will develop the continuing education training programs and distribute training CDs upon completion. Review of these training materials with trainers and industry officials is expected by mid February, 2007. The focus of the training is on the mine foreman, the key person expected to fully understand the issues and be prepared to lead the response to mine emergency and escape.

Mine Rescue Team Dilemma Facing Virginia's Small Mines

David Asbury, Emergency Response Coordinator, presented the broader scope of DM mine emergency response, underground being the primary focus, with other major areas consisting of surface mines, gas well sites silt and coal slurry (dams) impoundments. While DM recognizes authority with emergency situations on permitted areas, if a mine emergency is extended off property, jurisdiction, authority and response role requirements are broadened. For the purpose of extended resources DM has partnered with the Virginia Department of Emergency Management and other state and local agencies. DMME is also in compliance with and has personnel certified in National Incident Management System (NIMS), the National Response Plan and NIMS Incident Command Structure. The NIMS structure is being incorporated into mine emergency response drills and will become entrenched as part of emergency response plans. Charts illustrating DM's Emergency Response Team organization and compliance with ICS were presented. DM has a proposed plan to work on expanding its internal role through its core emergency response teams with other divisions of our Agency which fits the national response plan and the concept of a unified command structure.

Mr. Linkous stated the key issue is command center structure formation; being prepared and equipped to enable Virginia's professional mine rescue teams. DM's concentration is on planning and organizing to create the capability to respond quickly and effectively and in working with the individual mines' responses to a mine emergency.

Mike Willis, Mine Safety Engineer, reviewed requirements of the new Federal Miner Act in relation to the state designated mine rescue program which is governed by the federal Part 49 requirements. Rulemaking is underway to address the new standards. Currently, three teams, Lone Mountain, Paramount and Dickenson Russell are under contract with the Commonwealth of Virginia to provide mine rescue service to 39 mines enrolled in the program. Mike presented checklists of the mine rescue requirements for the categories of mines with 36 employees or more and mines with fewer than 36 employees, and the four types of mine rescue: individual mine site team, composite team, commercial team or state-sponsored team to service them. Factors in Virginia to consider are that two-thirds of Virginia's mines have less than 36 employees, most have short mine life with frequent

employee turnover, one-unit mines with simple, basic ventilation systems, and frequent changes in mine operator. The current state-designated mine rescue program will not likely be able to continue under mandates of the new Miner Act due to the extensive training requirements. DM requests a more flexible interpretation of training at the mine as mandated by the Miner Act of 2006. DM would prefer that mine rescue team captains or trainers make the required visits to the mine, rather than the entire team. DM would also like to see mine rescue teams that are under contract to the state be considered as state-sponsored teams made up of state employees. DM is working with MSHA, industry and mine labor groups to address the unique needs of Virginia's mines.

DMME Draft Proposal for Amendments to the Coal Mine Safety Laws of Virginia

The Board reviewed a proposed draft bill amending the Virginia Coal Mine Safety Laws, which is a work in progress. One of the key responsibilities of the Board is to advise DM in matters of the law and proposed revisions. The primary focus of drafting the bill is the substance abuse issue. The key focus in dealing with this issue is through the Board of Coal Mining Examiners in the certification process of miners. Also, the capability for the DMME, where there is a mine accident and reason to believe there was substance abuse on a working section, to require that drug testing be done. DMME has monitored implementation of Kentucky's very comprehensive and detailed law, and has received over 150 notifications from Kentucky of suspensions relating to drug testing. Amended language addresses:

- Certifications fees increase in order to pay for the associated administrative costs and request the latitude to raise certification fees and broaden the capability of the use of the fee to cover the cost of administering.
- Revocation of certifications is modified to allow the Board to suspend or revoke or take other action to deal with particular situations;
- Means of identifying certification holders by requiring reporting to the Board within 30 days of criminal conviction in any court for possession or use of any controlled substance without a prescription and immediate suspension of all certificates held pending hearing before the Board in closed session;
- Miners shall be deemed to have given consent to reasonable search by DMME employees of his person and property when on mine property;
- Require any person employed to work in Virginia coal mine prior to January 1, 1996, submit a complete application for certification as a general coal miner, by September 20, 2007, and subsequently issued general coal miner certification;
- Surface foreman certification requirements regarding age and experience changes to be similar to underground foremen;
- Surface maps of mines required to be made to standards similar to those of underground mines;
- Workers compensation coverage provided by participating mine operators for State Designated Mine Rescue Teams, to extend to travel by members of teams to and from mine disaster or training exercise
- Chief authorized to require substance abuse testing of miners involved in accidents and during investigations and inspections;
- Mine operator required to conduct substance-abuse screening prior to employing miners;
- The operator required to notify the Chief of a failure of any miner to pass substance-abuse screening test, failure resulting in temporary suspension of all certifications held by that miner;
- Operator must notify the Chief of any miner discharged for violation of the company's substance or alcohol abuse policies or who has tested positive for intoxicants while on duty. Such notice results in immediate temporary suspension of all certifications held.

After hearing and discussing proposed amendments, the Board offered recommended changes. In order to meet a consensus regarding substance abuse language in the draft bill, Benny Wampler led the Board in deliberating and reaching consensus on recommended changes. Benny then asked for a motion for approval of changes that would allow DMME to go forward with the proposed bill to amend the Coal Mine Safety Laws. The following recommended changes were incorporated within the draft proposal:

- Recommended that proposal for Chief to be authorized to require substance abuse testing post accident and complaint investigation, and during inspections be changed from “may” to “shall” require when justified.
- Recommended when a miner’s certification(s) are temporarily suspended for failure to pass substance abuse testing that a hearing before the Board of Coal Mining Examiners be conducted within 60 days of any temporary suspension.
- Recommended that the mine operator shall implement a substance abuse screening policy and program for all miners.
- Recommended that collection and testing of required samples follow standards, procedures, and protocols set forth by the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing.

Patti Church made the motion to approve the proposed amendments to the law with the changes stipulated; and Dave Berry seconded. Members in favor were Richard Waddell, Foster Tankersley, David Berry, Patti Church and Ernest Benko. Members opposed were Max Kennedy, Jr., William Kiser and Billy Powers.

❖ **Next Meeting: To be announced at a later date.**

Adjournment

Upon a motion made and seconded, the meeting adjourned.

Respectfully submitted,

Patty Varner
Patty Varner
Secretary