July 16, 2008

Mr. Kevin Stricklin, Administrator
Coal Mine Safety & Health
Mine Safety and Health Administration
1100 Wilson Boulevard
Room 2424
Arlington, VA 22209-3939

Re: Procedure Instruction Letter No. I08-V-03, Procedures for Evaluation of Requests to Make Extended Cuts with Remote Controlled Continuous Mining Machines (June 3, 2008)

Dear Mr. Stricklin:

On behalf of the members of the National Mining Association (NMA), for the reasons set forth below, I am writing to voice our strong objections to Procedure Instruction Letter No. I08-V-03, issued on June 3, 2008 (the June 3 PIL) and to urge its revocation. We believe the issues raised in this letter are of such importance that we request the opportunity to meet with you immediately at MSHA headquarters for further discussion.

Introduction

As we describe more fully below, NMA is concerned (first and foremost) that implementation of this PIL will significantly diminish the safety of miners. Based on NMA/MSHA discussions to date, we understand the motivation underlying the June 3 PIL to be the belief that certain practices associated with making extended cuts with remote controlled continuous mining machines result in over-exposure of miners to respirable coal mine dust. We do not believe that there is valid evidence to support this belief. On the contrary, many technical studies conducted by both the National Institute for Occupational Safety and Health (NIOSH) and MSHA’s Directorate of Technical Support show that maintaining equipment operators farther from the source of dust actually reduces their potential exposure from both respirable dust and quartz. We would be extremely interested in learning MSHA’s rationale for limiting the depth of cut based solely on its relationship to miners’ health.¹

The June 3 PIL: (1) targets one mining method utilized in one segment of the coal industry to address what the agency characterizes as an “industry” problem; (2) requires significant changes to mine design without consideration of implementation timeframes; (3) contains provisions unrelated to the stated purpose of the PIL; (4) 

¹ See excerpts from various NIOSH and MSHA reports attached as Enclosure 1.
unduly restricts district manager discretion to make site-specific plan approval decisions; and (5) infringes on operators’ legal rights. Most importantly, it will result in the introduction and/or heightening of known safety hazards to remedy perceived health risks.

We, like MSHA, are interested in better protecting our miners from coal workers pneumoconiosis and other chronic obstructive pulmonary diseases, but the June 3 PIL is neither an effective nor a lawful step to that end.

We now turn to a more detailed discussion of our concerns about the June 3 PIL.

**Implementation of the June 3 PIL Will Significantly Diminish the Safety of Miners**

One of the fundamental problems with the June 3 PIL is the unwarranted delay in ventilation and roof control plan approvals and the negative impact on the introduction of new technology with proven safety benefits in mines that have already established that extended cuts can be operated safely and in compliance with applicable legal requirements. ²

The black-and-white application of the June 3 PIL is blocking the use of best practices for mine safety and health. For example, in an MSHA District 8 stakeholders’ meeting, MSHA announced that, as a matter of policy, extended cut plans would be revoked if: (1) a mine operator adds a second intake air source to a mechanized mining unit (“MMU”), or (2) if a continuous miner’s cutting drum is replaced with the recently developed “wethead” cutting system. Both of these “policies” as stated in the District 8 meeting appear to be outgrowths of the June 3 PIL. They clearly discourage use of best practices. For example, university studies, as well as studies conducted by NMA member company’s show, where mining conditions and seam heights permit its use, a decrease in levels of respirable dust when the “wethead” system is used instead of

² The June 3 PIL directs that:

On-site evaluation of each proposed extended cut system must be conducted before granting full approval. The proposed extended cut system can only be utilized during the time MSHA is performing the on-site evaluation prior to the District Manager granting approval or indicating disapproval of the proposed ventilation plan. [MSHA] will initially grant approval for the operator to use an acceptable extended cut plan only during the time MSHA personnel are present at the mine-site to conduct the evaluation of the proposed plan. At all other times, the mine operator must follow the standard cut plan included in the currently approved ventilation plan which should require that the ventilation curtain/tubing be maintained to not more than 20 feet from the deepest point of penetration the face has been advanced.

June 3 PIL at 4. (Emphasis added.)
conventional cutting drums. In addition, the wethead system has the potential benefit of reducing the frequency of methane ignitions by quenching hot ignition sources and diluting methane at the point of release from the coal face. Furthermore, providing additional intake air ventilation to MMUs improves miners’ health and safety by removing respirable dust and diluting potential methane accumulations.

Our preliminary review indicates elimination or delays in the ability to use extended cut systems will result in the following adverse safety effects:

- **Increased Red Zone and Pinch Point Exposure** – Shortening of cuts from 40 to 20 feet will increase continuous miner moves by 85 percent in some cases. Similar increases will also occur in some cases to roof bolters and scoops. Red zone accidents are already on the rise in 2008 due to MSHA requiring reduced entry widths. On April 18, 2008 a red zone accident resulted in fatal injuries to a continuous mining machine operator. As detailed below, increased equipment place changes increase the potential for serious injury and equipment damage.

- **Increase in Movement of Equipment Accidents** – Increased movement of all face equipment will increase miners’ exposure to accidents. Over 50 percent of the underground coal mine fatalities this year are from these types of accidents. Excluding “red zone” accidents, 43 percent of continuous miner accidents are attributed to cable handling and tramming. By increasing miner moves by 85 percent, the June 3 PIL will increase exposure to cable handling/tramming hazards by the same amount. Similar considerations exist with regard to roof bolters. On Feb. 25, 2008, the first underground coal fatality this year was a scoop haulage accident and the effect of the June 3 PIL will be to increase the exposure of our coal miners to moving equipment hazards. By increasing the number of continuous miner and other face equipment moves in a shift due to shorter cuts, miners will be required to engage in more manual labor, resulting in increased fatigue over the

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3 Thus, in an October 2007 news release, NMA member Joy Mining Machinery stated “In comparing . . . MSHA dust samplings for two mines covering six months before and after the introduction of the JOY Wethead, ... there were significant dust reductions, reflecting an earlier Southern Illinois University study showing reductions at the miner’s return side of 35 percent on average.”

4 For purposes of this letter, the term “red zone” means the areas around remote controlled continuous miner where miners could be exposed to pinning or crushing injury due to inadvertent movement of the machine. See “Red Zones are No Zones for Mining with Remote Control Continuous Miners,” (attached as Enclosure 2). See also, excerpted pages from Colley et al., “Remote Control Continuous Mining Machine Crushing Accident Data Study,” MSHA Approval and Certification Center, May 2006 (attached as Enclosure 3).

5 In 2004, there were 283 reported injuries associated with continuous mining machines in U.S. underground coal mines. Of these 283 injuries, 100 (35.3 percent) were associated with cable handling, and 22 (7.8 percent) were associated with tramming. Combined, these two types of injuries account for 43.1 percent of the total. “Preventing Equipment Related Injuries in Underground U.S. Coal Mines,” Burgess-Limerick and Steiner, Mining Engineering, October 2007 (article attached as Enclosure 4).
course of the shift. Fatigue leads to poor decisions and will increase injury incidence in all categories.

- **Scrubber System Efficiency Reduced** – Some mines have higher concentrations of methane than others. In these mines, scrubber systems with hoods have been developed and perfected over the years to both capture dust and dilute methane. Once the miner head is into the cut, the efficiency of the scrubber system increases in regard to dust removal. By reducing the depth of the cuts, the number of cuts is doubled and, thus, scrubber efficiency is decreased and the dust exposure of miners is increased.

- **Turning Cross Cuts** – Mining crosscuts through as quickly as possible improves the dilution of methane. Delaying the completion of crosscuts with shorter cuts, will increase miners’ exposure to methane.

**MSHA Headquarters is Instructing Districts to Prohibit Extended Cuts If They Use Scrubbers and Blowing Ventilation Systems**

The June 3 PIL states “Exhausting face ventilation is the preferred method of face ventilation to provide the greatest degree of protection from dust exposure, whether using a supplemental system such as a scrubber or not” June 3 PIL at 9. (Emphasis added.) However, district officials have been instructed not to approve extended cuts if operators state that they plan to use blowing face ventilation with scrubbers or have a cut sequence that exceeds the new limits for roof bolting machine downwind exposure regardless of the mine or MMU respirable dust compliance history. The insistence that blowing ventilation should not be used, in turn, dictates the use of exhausting ventilation. Blowing face ventilation in quantities correctly matched to scrubber systems is a highly effective way to reduce or eliminate excessive respirable dust concentrations. Yet the use of either of these ventilation techniques should be dependent upon what is best tailored to the safe operation of each particular mechanized mining unit.

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6 “With the continuous miner at the start of the 40-ft slab, only about 5 percent of the available curtain air reaches the box-cut face regardless of the operation of the scrubber and water sprays. As the miner advances 20 ft into the slab cut, ventilation at the face of the box cut improves, especially with the use of the scrubber and water sprays” NIOSH Technology News No 472, May 1998

7 Current research shows that a general optimal face ventilation system may be either a blowing or an exhausting system that consists of a line brattice to guide air to the face. The choice of face ventilation system depends on whether dust control or methane control is the greater problem. The distance of the end-of-the-line brattice to the face may vary anywhere from 3 to 12 m (10 to 40 ft). However, with these distances, water spray systems and scrubbers mounted on the continuous miner are essential to the face ventilation system to direct air up to the face and dilute and remove methane and respirable dust. The specific details of a face ventilation system will vary between operations, as each mine has unique characteristics. These individual characteristics may influence the specific design of an optimal face ventilation system for that mine. Reed, WR; Taylor, CD Mining Eng 2007 Aug; 59(8); 40-51
For example, the use of blowing line curtains is a proven and effective ventilation method and may be a necessity when methane is encountered in the working face at certain mines because exhausting ventilation will not adequately sweep the face. In other configurations, blowing line curtains would allow uninterrupted ventilation, whereas an exhaust line curtain would be pushed against the coal rib by the continuous miner boom at the shuttle car, or cause additional handling material injuries due to having to install posts behind the line curtain to maintain adequate air flow, or a turn-in.\(^8\)

Scrubber use alone or in conjunction with other engineering controls or equipment represents an enormous technological step forward in methane and dust control. The June 3 PIL requires MSHA personnel to examine scrubbers and to observe scrubber maintenance procedures. If the agency’s concern is that scrubbers are not being properly operated or maintained, these concerns should be addressed by enforcement of proper operation and maintenance – not by an attempt to prohibit these highly effective and proven devices.

**The June 3 PIL’s Directions are Unlawfully Promulgated Mandatory Standards in Contravention of Mine Act § 101**

The June 3 PIL sets forth, for the “direction” of all MSHA Coal Mine Safety and Health enforcement personnel, procedures for evaluating requests for approval to make extended cuts with remote controlled continuous mining machines.

More specifically, the June 3 PIL states as its purpose:

> This PIL provides *direction* in evaluating requests for approval of extended cuts. It also provides *direction* for the evaluation of previously approved extended cut plans in accordance with the requirements of other inspection guideline documents.

**June 3 PIL at 1. (Emphasis added.)\(^9\)**

\(^8\) See three sketches attached as Enclosure 5, pictorially showing the efficacy and safety of blowing ventilation.

\(^9\) The American Heritage Dictionary (2d College Ed.) defines “direction” as “management, supervision, or guidance of an action or operation,” and “an order or command; authoritative indication.” Reports received from NMA members regarding stakeholder meetings in various MSHA coal mine safety and health districts make it apparent that virtually no discretion is afforded to MSHA personnel in implementing the June 3 PIL. The terms of the June 3 PIL, itself, also make this plain. In contrast to what are essentially mandates in the June 3 PIL, its 2006 predecessor PIL No. 106-V-06 stated as its purpose the following:

> This PIL is to provide a *guide* for use in evaluating requests for approval of extended-cuts. This *guide* will also *assist* in the reevaluation of previously approved extended-cut plans *should the need arise*. These procedures deal with the evaluation of plans and *include supplemental information to assist inspectors and specialists* in plan evaluation.
Because the June 3 PIL leaves virtually no discretion to MSHA district managers and their field officials and because the PIL contains such extraordinarily detailed directions, NMA believes that these directions constitute unlawfully promulgated mandatory standards, in contravention of § 101(a) of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”) (30 U.S.C. §§ 801, 811) and the applicable rulemaking provisions of the Administrative Procedure Act. 5 U.S.C. §§ 551, et seq.

**Rulemaking Under Mine Act Section 101(a) Is Required To Change the Mandatory Health Standards Contained in 30 C.F.R. Part 70; Issuing a PIL Does Not Comply With These Requirements**

Along with all the other detailed directions contained in the June 3 PIL for on-site evaluation of each proposed extended cut system, the June 3 PIL’s directives to District Managers to “[c]ollect respirable dust samples on all occupations over a sufficient number of shifts (minimum of two shifts) to evaluate all normal mining” as defined above, and “to consider whether approval of an extended cut plan is appropriate if MSHA-collected respirable dust samples indicate a dust concentration greater than the applicable standard or quartz concentration that exceeds 100µg/m³,” constitute a back door, indirect amendment of MSHA’s respirable dust standards as set forth in 30 C.F.R. Part 70. This is improper and in contravention of Mine Act § 101(a).

The fundamental flaw in the June 3 PIL plan evaluation approach is that the “applicable standard” for respirable coal mine dust is based on taking five valid respirable dust samples from the designated occupation in each mechanized mining unit on a bi-monthly basis, collected on either (1) five consecutive normal production shifts or (2) normal production shifts worked on five consecutive days. See 30 C.F.R. § 70.207. Thus, the scheme in the June 3 PIL to collect respirable dust samples on all occupations over a sufficient number of shifts (minimum of two shifts) cannot be used by District Managers to determine whether a dust concentration greater than the applicable standard exists because the collection of these samples is not in accord with the requirements of 30 C.F.R. § 70.207, based on five samples. The respirable dust standards themselves are premised on a rolling average of the five samples collected pursuant to 30 C.F.R. § 70.207 (see 30 C.F.R. §§ 70.100 and 70.101). Similarly, using samples collected per the directions set forth in the June 3 PIL to determine quartz concentrations in excess of 100µg/m³ is improper for the same reasons; and, in addition, 30 C.F.R. § 70.101 does not express a respirable dust standard when quartz is present in terms of micrograms per cubic meter.10

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10 **30 C.F.R. § 70-101** specifies:

> When the respirable dust in the mine atmosphere of the active workings contains more than 5% quartz, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed at or below a concentration of respirable dust, expressed in milligrams per cubic meter of air ..., computed by dividing the percent of quartz into the number 10.
Thus, the scheme set forth in the June 3 PIL does not comport with the requirements of 30 C.F.R. Part 70. Should MSHA wish to utilize this scheme, the agency must comply with the rulemaking requirements of Mine Act § 101(a).\textsuperscript{11} Procedural efforts like the June 3 PIL, however well intended, are wholly inappropriate and unlawful.

\textbf{CONCLUSION}

During the June 19 teleconference you stated that from the agency’s perspective the June 3 PIL was necessary to address industry-wide respirable dust overexposures and that industry stakeholders had been advised that such health issues would be addressed by MSHA unless operators took care of these problems by themselves. As previously stated, we look forward to a discussion with you regarding MSHA’s rationale correlating health overexposures to the practice of extended cuts, in light of numerous technical studies which conclude otherwise.

The June 3 PIL’s portrayal, however, unfairly paints all operators and all mines with a wholly unwarranted “broad brush.” Instead of punishing all operators for the infractions of some, NMA urges MSHA to carefully evaluate requests to make extended cuts with remote-controlled continuous mining machines based on compliance with the respirable dust standards of Part 70. Such evaluations should be carried out transparently and should be based on the relevant existing respirable dust sampling data at each mine. In this regard, we note that the respirable dust information files received on July 9 from MSHA appear (based on our preliminary review) to be data from \textit{all} “designated occupations.” There is no break-out, for example, for extended cut systems or continuous miner operator or nearby designated occupations, nor is there any distinction shown between samples containing quartz and those containing no quartz. In sum, whatever else the information supplied may demonstrate, it does not justify in any fashion the sweeping “one-size-fits-all” mandates of the June 3 PIL.

Effectively, the June 3 PIL requires District Managers to make trade-offs between miners’ safety and miners’ health, and to impose different and more stringent respirable dust standards than the law allows. Some might be attracted to the broad regulatory discretion that the plan-approval process allows but the issues addressed in the June 3 PIB are complex policy decisions that the Mine Act and the Administrative Procedure Act require to be made only through rulemaking and only after a careful, transparent evaluative process in which all interested parties are given an opportunity to research, analyze and comment on the alternatives under consideration by the

\textsuperscript{11} See generally, \textit{Nat’l Mining Assn. v. Sec’y of Labor}, 152 F. 3d 1264 (11th Cir. 1998). Mine Act § 202 sets forth a 2.0 mg/m\textsuperscript{3} respirable dust standard expressed as an “average concentration,” and based upon samples taken at locations and intervals as shall be prescribed in the Federal Register [i.e., Part 70]. 30 U.S.C. § 842. Mine Act § 202 is an interim mandatory health standard which can only be changed by Mine Act § 101. See Mine Act § 201. 30 U.S.C. § 841. See also Mine Act § 202(f) regarding the need for a “finding” to change the respirable dust standard from one based on a “number of continuous production shifts” to a sample based on a single shift only. It is unclear whether the June 3 PIL contemplates the use of a single respirable dust sample for use in approving extended cut ventilation plans. This Eleventh Circuit decision, however, clearly precludes such a practice without Mine Act § 101(a) rulemaking. \textit{Id.} 1267-1268.
agency. It is only through rulemaking that the agency will have the benefit of the best possible information in its decision-making and a court will have a record for judicial review to ensure its compliance with applicable legal standards. The use of a PIL that dictates to and insists that District Managers deviate from mandatory standards is an unwise and illegal action.

It is NMA’s long-held view that before MSHA issues pronouncements such as those contained in the June 3 PIL the agency should reach out to the affected stakeholders for the purpose of: (1) discussing the underlying problems the agency perceives need to be addressed; and (2) seeking the views of stakeholders on solutions to the problems raised. We are very disappointed that MSHA failed, in this instance, to follow this process which has been successfully employed in the past. We believe the PIL shows the ill effects of the failure to follow this course of action.

To conclude, NMA requests that MSHA rescind the June 3 PIL. We look forward to meeting with you to discuss other available avenues to address the agency’s concerns.

Sincerely yours,

Bruce Watzman
Vice President
Safety, Health and Human Resources

Enclosures