

**UTAH LABOR COMMISSION
MINE SAFETY TECHNICAL ADVISORY COUNCIL MEETING**

**Tuesday September 15, 2009 at 8:00 A.M
Carbon County Event Center
310 S Fairgrounds Rd
Price, UT 84501**

The following Advisory Council members were in attendance:

Sherrie Hayashi, Commissioner, Utah Labor Commission
Don Shelley, Deer Creek Mine
Randy Tatton, President, Mining Health & Safety Solutions
Todd Bingham, President, Utah Mining Association
Miles Nelson, Associate Vice President, College of Eastern Utah
Jimmy Brock, Senior Vice President, Consol Energy
Lamar Guymon, Sheriff, Emery County
Walter Arabasz, Director, Seismology Stations
Kim McCarter, Professor, U of U Department of Mine Engineering
Ralph Sanich, Manager of Health, Safety and Training, Interwest Mining Company
John Byars, Manager of Engineering, SUFCO Mine, Arch Coal
Bruce Riches, Captain, Department of Public Safety
Terri Watkins, Chief Nursing Officer, Castleview Hospital

Absent:

Mike Dalpiaz, International Vice President, United Mine Workers of America
Steve Childs, Skyline Mine
John Baza, Division Director, Department of Natural Resources, Division of Oil, Gas and Mining
Allyn C. Davis, District 9 Manager, MSHA
Jeff McKenzie, Acting Branch Chief, Solid Minerals, US Department of the Interior, BLM

Legislative Liaison present:

Senator David Hinkins

Others present:

Alan Hennebold, Deputy Commissioner and Legal Counsel, Utah Labor Commission
Pete Hackford, Division Director, Utah Labor Commission, Division of Boiler, Elevator and Coal Mine Safety
Garth Nielsen, Director, Office of Coal Mine Safety
Debbie King, Administrative Secretary, Coal Miner Certification

1. Sherrie Hayashi, Commissioner – Meeting called to order 8:10 AM

- I. Review of last meetings minutes
 - a. Walter Arabasz made a motion to approve as written.
 - b. Jimmy Brock seconded the motion.
 - c. Minutes were approved unanimously.

2. Garth Nielsen, Director, Office of Coal Mine Safety – Report on the progress of the Office of Coal Mine Safety since the last meeting in June.

- In the last three months Garth has attended three monthly trainings meetings at the Utah Labor Commission, a Utah fire protection meeting, a University of Utah subsidence meeting, local emergency planning committee meeting with the local sheriff's office. He attended a 4-day National Association for government organization meeting, and met with College of Eastern Utah three times with regard to the study guide for the Mine Foreman / Fire Boss certification testing. Most recently Garth had a speaking assignment at the University of Utah, speaking to new students coming into the mining engineering program.
- Garth attended the Mine Rescue National Competition in Nashville. We had six teams from Utah at the national competition. Many states award different trophies to participants from their state. He would like to look into having a state sponsored trophy for Utah teams that participate.
- Garth made six mine visits to set up wireless communication device testing.
- Garth made seven CFR Part 50 (Reportable Accidents) Mine Visits.
- Five mine visits that were not Part 50 visits – just regular mine visits. Three of those visits Garth remembers well because of the unsafe practices that were witnessed. On all three cases the mine operator put a stop to the unsafe practice and was very cooperative with the requests made. What happens when one day we have an operator who refuses to cooperate? What authority does the Office of Coal Mine Safety have to stop the dangerous practice?

Commissioner Hayashi invited comments from the council regarding Garth Nielsen's question.

- What would be the appropriate action for the Office of Coal Mine safety (OCMS) in the event that an operator refuses to comply and cooperate? What authority should the OCMS have in such instances?
 - Sheriff Guymon - Asked what authority the Office of Coal Mine Safety (OCMS) currently has?
 - Director, Pete Hackford - Explained that OCMS doesn't currently have any authority to enforce at this time. He suggested that we move on to the Emergency Response and Proposed Rules and then discuss Garth Nielsen's question, because they all coincide with one another.
 - Garth Nielsen – Pointed out that noncompliance/cooperation by an operator will be rare, but in the event that it does happen it needs to be clear what authority the OCMS does have to stop the imminent danger.

3. Emergency Response

- Pete Hackford gave a quick explanation of the proposed rules, and then turned it over to Deputy Commissioner, Alan Hennebold for a brief overview of the rule making process.

I. Proposed Rule - R616-4-3. Examining coal mines.

- Todd Bingham – Expressed his concerns about having double enforcement, MSHA and the State of Utah. He has no problem with Garth

Nielsen's authority to enter the mines, but does not want to see OCMS take on the role of enforcement. Leave it to one organization, MSHA.

- Walter Arabasz – Points out that the current language of the proposed rule, assumes that the OCMS is a one man office. In the future it is most likely that OCMS will have more individuals working within it. We need to make provisions for the future expansion of the OCMS when writing the rule, and take into consideration how the authority will be used by persons other than Garth Nielsen.
- Randy Tatton – Expressed his concern that the current language of the proposed rule leaves the corrective action (of the imminent danger) up to the operator. How do we ensure that will happen?
- Garth Nielsen – Added that he thinks the current system is working well. MSHA enforcing the law and the State visiting and observing. The question is with how to stop an imminent danger at the time it is happening, not whether OCMS should start writing violations and conducting inspections.
- Jimmy Brock and Ralph Sanich – Added comments about Garth Nielsen's current role. Right now he is welcomed in the local mines and viewed as an asset or a friend. If you give him enforcement authority he will no longer be welcome and viewed as another MSHA inspector.
- Todd Bingham – suggested that we be very specific and give OCMS the power to stop an imminent danger, but no inspection authority.
- Don Shelley – noted that the situations described by Garth Nielsen happen frequently in coal mines, and most often the operator is the one to take care of it. However, there will be a time that an operator will not comply and OCMS needs to have the authority to stop the dangerous practice. He agreed with others that OCMS should not become inspectors.
- Sheriff Guymon – pointed out two things. First, Garth Nielsen will not always be in the current OCMS position. We need to be careful what we write into law, and who we give what authority to. Second, just because you have authority doesn't mean you always have to use it. OCMS needs to have the authority to stop an imminent danger if necessary. There will not always be someone there, MSHA will not always be available. He needs have the capability to stop the danger immediately.
- Todd Bingham – asked if giving OCMS the authority to stop an imminent danger would require a statute change?
- Commissioner Hayashi and Alan Hennebold – explained why it would require a statute change.
 - a. Todd Bingham motioned to add the definition of Garth Nielsen's role, and authority, to the agenda for the next meeting.
 - b. Miles Nelson seconded the motion.

II. Proposed Rule - R616-4-4. Accident notification requirements.

- John Byars – asked why we should require the operator to notify OCMS, instead of MSHA, when a reportable accident is reported to them?
- Garth Nielsen – explained that sometimes MSHA forgets to notify him. Sometimes the operator forgets to notify him.
- Kim McCarter – asked why MSHA has to be notified first? Why can't you notify both organizations simultaneously?
- Public comments made by Ken May and Jim Poulson – Each expressed their concern with providing the notification within 15 minutes. They feel that is extremely hard, if not impossible. They also would like MSHA to notify OCMS instead of the operator.
- Jimmy Brock – The problem is not with whether or not OCMS should be notified, the issue is who makes the call and the time frame.
- Commissioner Hayashi – points out that it is not within our jurisdiction to require the federal government to do anything (including notify the State.)
- Gary Christensen – explains that the process of notifying MSHA can be timely, and can include several phones call back and forth along with speaking with several different people. Adding OCMS to the list makes it even longer, and one more person they have to explain the situation to. It may be best to have MSHA deliver the message to OCMS.
- Commissioner Hayashi – concludes that MSHA should be a part of the active discussion before moving forward with this rule.

III. Proposed Rule - R616-4-5. Emergency response training.

- Public Comments made by Wess Sorensen – We are required by MSHA to have emergency training. We don't want to have additional required training that may conflict with the MSHA regulations.
- Public comments made by Ken May – points out that the discussion at the last meeting was that OCMS would be a part of their internal training, not dictate how they do their training.
- Public comments made by Kevin Tuttle – expressed concern that this regulation would require them to have a Mine Emergency Rescue Drill (MERD) every year. He is in favor of Garth Nielsen being involved in their current training, but a MERD would be a burden that some mines may not be able to handle. He would like to see clarification in the language.
- Garth Nielsen and Sheriff Guymon – summarize the discussion on this subject at the last meeting.
- Kim McCarter – suggested that a simple change in language could resolve a lot of the confusion on this proposed rule.
- Todd Bingham – suggested a task group be assigned to come up with the new language for the proposed rules.
 - a. Todd Bingham motioned to table both issues (R616-4-4 and R616-4-5) until the next meeting.
 - b. Terri Watkins seconded the motion.

4. Legislative Report

- Background of legislative report and deadline.
- MSTAC discussion of report.
 - Walter Arabasz - suggested we think of the future of the OCMS. A one man operation being available 24/7 is unrealistic. We need to ask legislation for additional funds to add staff to the office in the future.
 - Todd Bingham – noted that approaching legislation for additional funding may be premature at this point, not to mention potentially bad timing.
 - Walter Arabasz – added that waiting may not be wise. What if something were to happen to Garth Nielsen tomorrow? Would the whole program collapse because you can't replace him with another one man fill-in?
 - Todd Bingham – suggested we give legislation a heads-up on what we may ask for down the road, instead of turning in a recommendation this legislative session.

5. New Business - Miles Nelson, Associate Vice President, College of Eastern Utah gave a brief report of the current status of training.

- Utah State University (USU) and College of Eastern Utah (CEU) are moving forward with their merger. CEU will assume the USU name. Cory Duckworth has been appointed to coordinate the process. The paperwork should be completed by December so it will be ready to present to legislation in January.

Next meeting – will be held in Salt Lake City, December 15, 2009 at the Heber Wells Building, 160 East 300 South; Salt Lake City.

Motion to adjourn made by John Byars.
Seconded by Terri Watkins.

Adjourn: 10:15 AM