

**Email Comments to Utah Mine Safety Commission
As of December 11, 2007**

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State Mine Inspector Statute Changes

In an effort to eliminate the duplication of efforts between the federal government (US Dept. of Labor, Mine Safety & Health Administration – MSHA) and the New Mexico State Mine Inspector's office there are language changes in State Statute 69 that are necessary to clarify the current roles and responsibilities of the State Mine Inspector's Office to insure that the State Mine Inspector's office has a clear mission and strategic plan for insuring the health and safety of the miners in New Mexico.

For many years states were charged with the "inspection" and enforcement of State laws in regard to mining. In 1969 the Federal Coal Mine Safety Act was implemented to insure the health and safety of the miners in the United States. In 1977 this Act was repealed and replaced with the Mine Health and Safety Act which continues to be enforced today and extends itself to not only the coal industry, but every person affiliated with the extraction and production of all types of minerals within the boundaries of the United States. Along with the original Coal Act and subsequent Mine Act the Code of Federal Regulations Title 30 was created to specifically address the minimum standards to be maintained by miners and mine operators to insure safety. In addition, an agency under the Department of Labor called the Mine Safety & Health Administration was created. This agency is responsible for the actual on-site inspection of all mining operations to insure compliance with the CFR 30 requirements. When deficiencies are found the MSHA inspector issues a citation to the mine operator and MSHA and the mine operator are then responsible to insure that a correction is made immediately.

Currently the state's role is one of training and not enforcement. The mission of the State Mine Inspector's office is to assist miners and mine operators by conducting training, certifying coal officials, offering technical expertise, and promoting and supporting the mining industry in general. If you will, it is specifically designed to be a proactive process to insure that miners have the knowledge and skills to enter the mining industry and not suffer any adverse affects in regard to their health and safety. The State Mine Inspector's office is located at the New Mexico Institute of Mining and Technology in Socorro, New Mexico. We are a recipient of a federal grant through the Mine Safety and Health Administration to provide health and safety training to miners within New Mexico.

Through the careful and diligent efforts of the Mining Safety Advisory Board in conjunction with the State Mine Inspector we feel that these proposed changes to the state statutes will reflect a more comprehensive outline of the current status of the State Mine Inspector's duties and responsibilities. The issue of enforcement, inspection, and penalties is and should remain the primary interest of the Mine Safety & Health Administration. The State Mine Inspector works with the local, regional, and national offices of the Mine Safety & Health Administration to promote and insure the continuation of effective health, safety, and training programs to insure compliance of federal regulations and the safety of all persons working in the mining industry within the confines of the State of New Mexico.

STATE MINE INSPECTOR – A BRIEF HISTORY

- 1912 – New Mexico Constitution establishes the position of "inspector of mines" (now "state mine inspector") to be appointed by the Governor with advice and consent of the Senate (Article XVII, Section 1) and requires the Legislature to adopt laws to protect the health and safety of mine employees (Article XVII, section 2).
- 1933 – Legislature adopts a comprehensive set of mine safety laws. Many still exist today.
- 1961 – Legislature enacts the Mine Safety Act which includes the creation of the Mine Safety Advisory Board
- 1977 – Legislature creates the Department of Energy and Minerals and makes the State Mine Inspector the chief of the new Bureau of Mine Inspection within the new Mining and Minerals Division.
- 1977 – Congress passes the Mine Health and Safety Act and establishes the Mine Safety and Health Administration within the U.S. Department of Labor.

- 1987 – Legislature repeals large portions of state’s mine safety laws.
- 1989 – Legislature transfers the Bureau of Mine Inspection and State Mine Inspector to New Mexico Institute of Mining and Technology.

STATUTORY REVIEW

During the past year, the State Mine Inspector and the Mine Safety Advisory Board have reviewed what remains of the state’s mine safety laws and rules. We have discovered that many laws are outdated and have been preempted by federal mine safety laws. Also, the laws do not accurately reflect the current roles and responsibilities of the SMI. In addition, the relationship between the SMI and the Board is sometimes confusing and ineffectual.

The SMI and the Safety Board have developed a set of proposed legislative changes.

GOALS OF PROPOSED LEGISLATIVE CHANGES

- Align the statutory duties of the State Mine Inspector with the actual duties of the SMI and focus on training, certification and outreach.
- Clarify the duties of the Mine Safety Board and provide more effective oversight of the SMI by the Board. Provide the Board with clear authority to enact rules and allow for appeals to the Board.
- Clarify the authority of the SMI to certify coal mine officials.
- Repeal outdated statutes pertaining to the enforcement of mine safety rules now preempted by federal law and enforced by a federal agency.

Outline of Proposed Changes

The largest majority of this statute (69) needs to be repealed. Listed below is a draft of some of the specific articles that we feel need to be repealed and replaced with the correct language to reflect today’s mining industry in New Mexico.

69-5-7. Duties; state mine inspector; director of mining and minerals

A. The state mine inspector shall:

- (1) Upon notification of any explosion or other catastrophic event at a mine in which the life/lives of mine workers are jeopardized or in which fatalities have occurred the state mine inspector shall allocate available resources to assist mine operators with the investigation of such accident or the remediation of any mine emergency as requested by the operator.
- (2) Upon request from a mine operator provide compliance assistance to any mine within the state to aid in the health and safety of the miners and the mine operators.
- (3) Support and maintain a New Mexico mine bell code signal system and provide information as requested.
- (4) Make a report to the Governor on or before June 1 of each year, which report covers the preceding calendar year and contains a review of the official acts of the inspector.

69-5-9. [Right of entry and inspection in mines; operator’s representative].

The state mine inspector is given authority at all reasonable times to enter any mine in the state in such a man-

ner as to not impede or obstruct the workings of the mine to review all matters relating to the safety and health of the employees who work in or about the mines.

69-5-14. Ordering dangerous conditions in mines be removed or removal of workers from danger zones.

Should the state mine inspector find during any visit to a mine that in his opinion a dangerous condition exists therein, that might cause the loss of life or serious personal injury to the employees, the state mine inspector shall notify the operator at once. If the operator does not take action to mitigate the hazard or take corrective action the state mine inspector will immediately contact the Mine Safety & Health Administration office to communicate the health or safety concern.

69-5-16. Operator's Compliance.

The operator of every mine shall observe and comply with all lawful orders, regulations and written notices issued by the state mine inspector or the director of the division of mining and minerals of the energy, minerals and natural resources department in accordance with their respective statutory duties.

69-5-17. Fatal and serious mine accidents;

Operator shall report all fatal mine accidents to the state mine inspector within 24 hours of occurrence. Non-fatal lost time accidents shall be reported to the state mine inspector on at least a quarterly basis.

69-8-3. Mining safety advisory board.

There is created a "mining safety advisory board" hereinafter referred to as the board, consisting of thirteen (13) members, of whom six (6) shall represent industry, six (6) shall be non-supervisory production or maintenance employees and one, who shall serve as the chairman and vote on all motions, shall represent the public. A member representing industry and a member representing non-supervisory production or maintenance employees shall be chosen from the coal mining industry, the molybdenum mining industry and the sand and gravel operations. The members of the board shall be appointed by the governor for a term of four years or until their successor are appointed and qualified, provided that the initial appointment of the two members from the molybdenum mining industry and from the sand and gravel operations, and one employee-member representing the same type of mining activity shall be appointed from the three current major types of mining activity in terms of total employment within the state. Vacancies shall be filled by appointments for the unexpired term by the governor in the same manner as the original appointments. The state mine inspector and the director of the mining and minerals division, shall be ex-officio members of the board but shall have no vote and receive no additional compensation for the duties performed in connection therewith.

69-8-4. Duties of the board; rulemaking.

A. The board may, after a public hearing adopt rules, for the protection of the life and safety of employees and to carry out the intent of the Mining Safety Act. The board may appoint a special committee of employers, employees and experts to assist in the development of proposed rules. The inspector may make recommendations to the board as necessary to carry out his duties and the intent of the Mining Safety Act.

B. Notice of the subject, time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule may be obtained shall be:

- (1) published at least thirty days prior to the hearing date in a newspaper of general circulation in the state and in the New Mexico register, if published; and
- (2) mailed at least thirty days prior to the hearing date to all persons who have made a written request to the

board or the inspector for advance notice of hearings.

C. The board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. The board may designate a hearing officer to take evidence in the hearing. Any person who provides comments shall be given written notice of the action of the board.

D. All rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

E. A person who is adversely affected by a rule adopted by the board may appeal to the court of appeals for further relief. All such appeals shall be upon the record made before the board and shall be taken to the court of appeals within thirty days after the rule becomes effective under the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Upon appeal, the court of appeals shall set aside the board's action only if it is found to be (1) arbitrary, capricious or an abuse of discretion; (2) not supported by substantial evidence in the record; or (3) otherwise not in accordance with law.

69-14-1. Mine foreman; mine examiners; shotfirers; qualification by state mine inspector.

The state mine inspector, with the gratis assistance, of local mine operators, and the board shall maintain a program to include application, testing, and certification for all persons to act as mine foreman, mine examiners and shotfirers in coal mining operations in the state of New Mexico. No operator shall employ any person as a mine foreman, mine examiner, or shotfirer unless he has been certified by the state mine inspector for such position.

69-14-2. Methods of qualification; examinations.

The state mine inspector shall certify persons for the positions of mine foreman, mine examiner and shotfirer accordingly as follows:

A. Applications are required to be received in the state mine inspector's office no later than 30 days prior to the schedule test date. All program requirements will be reviewed and the applicants will be notified of the eligibility to participate in the testing process within two weeks of the scheduled test date. The state mine inspector shall hold written examinations at times and places to be communicated at least thirty days in advance. In the event of an immediate need to secure certification of any person, outside of the regular testing schedule a request must be made in writing to the state mine inspector and the state mine inspector will make the examination available in the office of the state mine inspector in the most expedient manner available.

1. Certification as an underground foreman shall require each applicant to have at least four (4) years of experience in underground coal mines and at least six (6) months of experience as a coal mine examiner. Degreed engineers in a mining discipline shall be required to have at least two (2) years of experience in underground coal mining and at least six (6) months experience as a mine examiner.

2. Certification as a surface mine foreman shall require each applicant to have at least four (4) years of experience in surface coal mines, with an emphasis in the production processes to include extraction, transportation and processing of coal. Degreed engineers in a mining discipline shall be required to have at least two (2) years of experience in surface coal mining with an emphasis in the production processes to include extraction, transportation, and processing of coal.

3. Certification as an underground mine examiner shall require each applicant to have two (2) years of experience in underground coal mines and be currently qualified to test for methane and oxygen deficiency or successfully demonstrate to the state mine inspector or his designee proficiency in methane detection and oxygen deficiency testing.

4. Certification as an underground shotfirer shall require each applicant to have at least one (1) year of underground experience in underground coal mines and be currently qualified to test for methane and oxygen deficiency or successfully demonstrate to the state mine inspector or his designee proficiency in methane detection and oxygen deficiency testing.

****New question.**

How can we help Molycorp to be able to take UG Foreman/Supervisors and get them certified as surface coal officials without having to wait for 4 years? This would also apply to the BHP folks who may have foreman underground who want to move to the surface or folks from metal/non-metal underground operations at other locations in and out of the State of New Mexico and allow them to hire and subsequently certify their supervisors.

The State of Colorado regulations for surface foreman is as follows:

“.....a minimum of 3 years working experience in coal mine, or in mining determined to be equivalent by the Board, at least one of which years shall have been in a surface coal mine.”

The same language is there for underground coal mine qualification/certification.

Do you think it would be feasible to generate a fast-track type of training program to insure that the candidate has a firm understanding of the laws and the requirements for surface and/or underground coal operations? We have study guides that we are developing for each of the certifications that could be used as a training guide. The candidates would have to successfully pass the testing requirements. In all cases coal foreman are required to have methane detection and oxygen deficiency qualification which takes at least 6 months for an underground candidate and there is no minimum time requirement for surface coal foremen.

Need feedback on these issues as quickly as possible.BB

69-14-4. Certification period; re-certification; discipline; appeal

A. Certifications for mine officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to the date of this act shall have their certification period extended for two years. Each certified official has the responsibility to notify the inspector of any change in address or change in mine employment within thirty days of such change.

B. Certified officials may apply for re-certification within twelve months prior to the end of the certification period. Re-certification will require proof of training for the annual re-training of certified, qualified, individuals as required in Title 30, of the Code of Federal Regulations. Any official who cannot provide documentation of this training will be required to re-test. If the official should fail the test, a one-time 30 day grace period will be allowed in order to facilitate the person to successfully re-certify. In no instance shall anyone be allowed to re-test more than twice within the 30 day period. Anyone who does not successfully re-certify within the 30 day grace period will have a 1 year suspension of their certification and will not be allowed to be employed as a certified official. Suspended officials will have the opportunity to apply and test for new certification no sooner than 12 months from the first failed test.

C. The state mine inspector may refuse to certify or re-certify or may suspend or revoke any certification held or applied for under this article upon grounds that the applicant or certified official:

(1) gave false or forged evidence to the inspector to obtain a certification;

- (2) is grossly negligent or incompetent in his duties as a certified official;
- (3) has failed to maintain his certification;
- (4) has violated or aided or abetted any person in a violation of the federal Mine Safety and Health Act or the state mine safety laws; or
- (5) has been revoked, suspended, or otherwise disciplined in another state that certifies mine officials or by the Mine Safety & Health Administration where no such state program exists.

D. If the inspector contemplates taking any of the action is subsection C of Section 69-14-4 for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified official. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general nature of the evidence, and that provides the applicant or official at least twenty days to submit written evidence to rebut or explain the allegations. If, after the response period ends, the inspector takes an action listed in Subsection C of Section 69-14-4, the applicant or certified official may appeal such action to the mining safety advisory board within thirty days after notice of the action. The board, upon request, may conduct a hearing on the appeal.

E. A person who is adversely affected by a decision of the board under this article may appeal to the district court pursuant to provisions of Section 39-3-1.1 NMSA 1978.

DRAFT

September 12, 2007

Senator Bennett

Senator Hatch

Rep Matheson

Rep Bishop

Rep Cannon

Gov. Huntsman

Re: Committee Investigations of Crandall Canyon Mine Disaster

Gentlemen:

The catastrophic events of the past weeks have touched the communities of Carbon and Emery County deeply. The initial shock of news of a mining accident and the roller coaster of emotions which have followed leave us saddened, and unfortunately on somewhat familiar ground. Our communities are grateful for the care, compassion and support each of you has shown as the unfortunate events unfolded. At present, we find ourselves grieving with the families of the lost, trying to look to the future now. Following each mining accident, there comes the time when each of us ask the inevitable question, how did this happen? Could it have been prevented?

The recent action taken at the national and state levels are, we believe, natural and expected responses to a catastrophe which has claimed the lives of nine irreplaceable men. We understand that Senator Bennett has cautioned against reacting emotionally and in a knee-jerk manner. We appreciate that caution. As the committees have been formed to review facts and circumstances surrounding the events at the Crandall Canyon Mine, we have no doubt that the intent is noble and with the best of intentions. However, we would advance the following cautions in regard to any proposed recommendations by these committees.

- Avoid taking an “outside looking in” attitude. It is always easiest to become the Monday morning quarterback and have all the easy answers after the fact.
- At the State level, there appears to be an out of balance weighting of elected officials to underground mining experience. Seek out the testimony of those with underground mining experience. There is no substitute for hands on experience.