

**Comments of the Pennsylvania Coal Association on Specific Sections of SB 949; The Department of Environmental Protection’s Proposed Comprehensive Amendments to the Pennsylvania Bituminous Coal Mine Act**

**ARTICLE I  
APPLICATION, DEFINITIONS, ADMINISTRATION**

**Section 102 - Application**

Section 102 states that the amended act will apply to “all bituminous coal mines.” While the Department has indicated that it does not intend the amended act to be generally applicable to surface mines, this language brings such mines within the scope of Articles I, V, VI and VII.

**Section 103(a)(10)** states that it is “imperative” that the Department has the capability to supervise and accomplish mine rescue operations. When this provision is read with later provisions of the proposed amendments, the concept creates a number of problems. The proposed approach is in conflict with the federal law. While the state has a significant role in mine rescue activities, such role must be harmonized with the role the operator has and the role the federal government has. The state can not, and should not, assume the primary responsibility for a particular mine rescue operation. As the federal government found when it asserted such preeminence during the Scotia Mine explosion in 1976, assumption of sole responsibility results in the assumption off significant liabilities.

**Section 104 – Definitions**

The Department’s proposed amendments substantially revise many of the existing definitions in the Mine Safety Act. Some of the definitions are the same as federal definitions, but others, such as “face,” have been changed subtly, but substantially enough to cause confusion and problems. Some definitions, such as “persons,” “processing,” “shift,” and “approval,” have been expanded or added to increase the Department’s authority. The definitions should be consistent with the federal definitions. It should also be noted that the definitions by implication expand the authority of the Bureau of Deep Mine Safety to surface structures, such as impoundments, culm banks and refuse piles where the Bureau of Deep Mine Safety does not currently exercise jurisdiction, although the Department does as to impoundments.

**Accident** - SB 949 adopts the federal definition of “accident” in 30 CFR 50.2(h), but changes it in several significant and unacceptable ways. In subpart 3 of the definition the length of time for an entrapment to constitute an “accident” is changed from the federal standard of 30 minutes to 5 minutes. In subpart 6 of the definition the length of time within which a mine fire must be extinguished so as not to constitute an “accident” is 5 minutes, as opposed to the federal standard

of 30 minutes. There is no basis for these changes. They will result in confusion and the inability to correlate state and federal “accidents.” Otherwise, the definition mirrors the federal definition.

**Active workings** - The existing Section 103 definition of “active workings” is proposed to be amended, but not to adopt the federal definition in 30 CFR 75.2. The amended definition of “active workings” is based upon whether places in a mine are ventilated and examined, not whether persons work or travel there. The existing and proposed definitions are circular in a sense because they are linked to the performance of inspections in the area. Since the Department always has taken an expansive view of what must be examined, an area becomes part of the active workings because the Department requires inspection, even if miners do not normally work or travel in the area. Neither the existing nor the proposed definition is consistent with the federal definition of “active workings” at 30 CFR 75.2. The conflict between the existing and proposed state definitions and the federal definition interjects uncertainty into what is considered an active working.

**Certified person** – SB 949 expands the existing Section 103 definition of “certified person” to include machine runners, shot firers, and miners. The definition is also proposed to be amended to require all certified persons to hold a certificate from the Department. It is unclear to us why such changes are necessary. It is our belief that the Department intends to apply this definition in an overly restrictive fashion. In our opinion, the existing definition remains appropriate.

**Imminent danger** – This is a proposed new definition which defines “imminent danger” in a manner that is somewhat similar to the definition in the federal act, 30 USC 803(j), but curiously leaves out the most significant portion of the definition, the portion that actually introduces the concept of “imminence” for the term. The state definition should be the same as the federal definition.

**Lateral and face take-ups** - This proposed new definition includes a substantive requirement that lateral and face take-ups not exceed a distance greater than 300 feet from the last survey station spad. This definition imposes unreasonable restrictions since in some operations, operators drive (mine) in excess of 300 feet in one mining cycle. This definition imposes a duty and restrictions that can be found in no other state or under federal law.

**Mine** – SB 949 includes an amended and expanded definition of “mine” which includes every process through reclamation. It also expands jurisdiction to surface operations, which are not currently within the Department’s safety jurisdiction, including free-standing preparation facilities, as well as offsite facilities such as loading docks. It appears to expand the Bureau of Deep Mine Safety’s (“BDMS’s”) authority to include surface mines, contrary to the Department’s representations. It also expands the time frame for the assertion of such authority because it includes “until reclamation is completed.” We assume that will mean the time when bonds are released which may run for 5 to 10 years after mining actually ceases. This will require a significant increase in the BDMS’s inspection force because the BDMS is required to inspect such sites four times a year, even if there are no miners working at them. This expansion of coverage of the Mine Safety Act is not necessary because surface facilities are inspected by Department surface mine inspectors and because there is no evidence that a change is necessary.

The last sentence of the definition provides “When the term [mine] is used in Articles II, III, and IV, it shall mean ‘underground mine’.” If the act is not intended to apply to surface mines, then this sentence is not necessary. The term “mine” should mean “underground mine” in all Articles of the act.

**Mine foreman** – SB 949 amends the current definition of “mine foreman” and makes a reference to “visitors.” The term “visitor” is not defined. Given that the definition of “miner” is limited to only those certified as miners, a clear definition of “visitor” is necessary.

**Miner** – This is a proposed new definition which would define a “miner” as only someone certified by the Department to work in an underground coal mine. It does not address operators’ employees who regularly go underground, such as upper level company management. Nor does it address representatives of equipment manufacturers who frequently are in mines to trouble shoot and solve equipment problems.

**Person** - This is a proposed new definition which would define a “person” very broadly to include, among others, the federal government. This definition would make the federal government subject to enforcement action by the Department. See Sections 501 and 502. While we do not mean to suggest that the Department intended to make the Federal government liable for penalties, this sort of oversight, which is apparent in other provisions of the proposed amendments, is indicative of what can only be considered careless drafting. This raises concerns about other such “mistakes” that are included but not yet discovered in this draft.

**Processing** - This is a proposed new definition which would define “processing” very broadly. It is apparently another attempt to extend jurisdiction to off-site facilities, such as docks, stand alone preparation plants and loadouts, which are not currently regulated under the Mine Safety Act. There is no justification for such extension of authority because these facilities are adequately inspected by state surfaces mine inspectors or federal authorities. Also, because the definition refers to “sizing” and “loading” of coal it is possible to argue, and we would expect the Department to do so, that the definition includes the coal handling facilities at electric power generation stations and other end users of coal. Such an extension of authority is wholly unwarranted and unjustified.

**Return air** – This proposed new definition is inconsistent with the federal definition because it only partially adopts that definition. See 30 CFR 75.301. Also, the proposed state definition relies upon the use of a term, “worked out area” without defining it. The federal regulations do define it. See 30 CFR 75.301. The use of the term “worked out area,” without definition, could, and no doubt would, be construed in an overly broad fashion and could include mainline entries or other areas not technically abandoned which do not come under the federal definition. The state definition should be the same as the federal definition.

**Shaft** – SB 949 includes amendments to the existing definition of “shaft” to include shafts used for purposes other than ventilation, hoisting or drainage. The purpose of this change is not clear.

It could be construed to include degasification holes. The lack of clear purpose or need for such a change suggests to us that it is unnecessary.

**Shift** – SB 949 includes a new definition for “shift” which promotes an interpretation of Section 228(a) concerning pre-shift examinations that was recently rejected by Commonwealth Court. This sort of “minor” change that is intended to reverse the Commonwealth Courts ruling is wholly inappropriate.

**Spad** - This proposed new definition is unnecessary. It codifies a type of marker that may well become outdated. A “spad” as defined in this section is not similar to the use of stakes in surface surveying because installation of these “spads” is far more labor intensive and survey stakes are not intended to be permanent. There is no need to define this term.

**Superintendent** – SB 949 includes proposed changes to the existing definition of “superintendent”. The proposed amendments appear to expand the definition of “superintendent” to put him/her in charge of underground operations. Existing law makes the superintendent responsible for operations on the surface and the mine foreman legally responsible for underground operations. There is no legitimate reason to change the longstanding roles of superintendents and mine foremen.

**Survey line** – SB 949 includes a proposed new definition of “survey line.” It appears to impose the substantive requirement that survey lines be shown on mine maps. This is not current industry practice in Pennsylvania or anywhere else. It would unnecessarily clutter mine maps. It is unnecessary.

**Underground mine** – The proposed definition includes permanently abandoned and sealed mines in contrast to the existing definition of “mine” in Section 103(6) of the Mine Safety Act. Again, this appears to be an unnecessary expansion of authority and responsibility which would result in an increase in the BDMS staff.

**Work area** - This is a proposed new definition. It is very broad in scope. It is intended to tie into the expanded examination requirements contained in SB 949. As discussed below, such expansion is problematic because a “work area” can be construed to include areas where the only “work” is an examination. The bleeder entries are extensive networks of entries and the only work in them is examinations or limited work such as installation of a roof support post or similar work. They are often remote. The only means of travel is by foot and it can consume several hours to travel to a particular location in the bleeders. It would be unreasonable to require an examination by a foreman of such purported “work areas” and the definition does not reflect recognition of this problem. The federal regulations do not require such areas to be examined.

**Working section** – This is a proposed new definition that would define a “working section” to include the area as far back as 1000 feet from the face. This was apparently adopted because a similar definition is used for the purposes of experience under the certification requirements. See 52 PS 701-206(a). The problem with use of the definition beyond certification is that it unnecessarily expands the area a section foreman would be responsible for and expands the area

for which power might have to be deenergized. There is no justification for either expansion. The MSHA regulatory definition for “working section” as being the area from the faces to the loading point is more appropriate and realistic. See 30 CFR 75.2.

### **Section 105 – Powers and Duties of the Department of Environmental Protection**

This section begins with a statement that the Department’s duty is to “administer a mine safety program for persons employed at mines.” This assertion is inconsistent with Section 103(a)(6) of SB 949, which places primary responsibility for prevention of hazards on operators. This sort of assertion is illustrative of the overarching authority the Department seeks to obtain. It also emphasizes the fact that the BDMS will have to expand its staff significantly to fulfill all of the duties it now seeks to accrue, including expanded equipment approvals, penalty assessments, and the like.

The Department fails to recognize the fact that there is a federal agency that devotes considerable resources to exactly the same tasks the Department now seeks to perform. It also fails to recognize that there is an entire body of law developed by the federal government that preempts in some instances state regulation. This is not a federal oversight situation as exists with many environmental regulatory programs. Instead, there are dual federal and state enforcement programs, with the inconsistencies being multiplied by the Department’s proposed amendments.

**Section 105(1)** gives the Department broad authority to conduct inspections. Of course, such authority cannot be exercised in a way that violates the United States or the Pennsylvania Constitution. The provision that gives the Department authority to examine or copy “ANY” record during its inspections is excessive. It would permit inspection and copying of not only those records required to be maintained under the act, but confidential business records, medical records, personnel files, attorney-client privileged documents and similarly sensitive documents. Such broad authority is unwarranted. At a minimum, the Department’s authority should be limited to examination of documents required to be maintained under the act.

**Section 105 (2)** would authorize the Department to conduct private interviews of persons at a mine. This evidences the Department’s sole focus on punitive enforcement. Use of such power precludes cooperative investigation of accidents. It presumes that persons will not tell the truth in a traditional accident joint investigation format. It will also potentially make investigations more difficult for the Department since its investigations will have to be conducted independently and potentially without the cooperation of other involved parties, including MSHA.

**Section 105(5)** is relatively straight forward language concerning authority to institute prosecutions. It begs the question whether this simple provision can authorize the Department to institute prosecutions when normally such authority is reserved to the Attorney General and the county district attorneys. Also, given the broad definition of “person” under Section 104, we are opposed to vesting authority in the Department to institute criminal prosecutions, rather than refer such matters to the Attorney General or to the appropriate county district attorney.

**Section 105(6)** permits the Department to determine if a person is “qualified to carry out a particular function or duties at a mine and to issue certification” thereof. This section should be specifically limited in scope to situations where the Department has specific statutory authority to certify foremen, examiners, etc. Otherwise, this section could be construed to extend beyond the certification of foreman, examiners and the like to a determination as to whether a particular individual is qualified to perform a particular task, such as run a particular piece of equipment. Such authority far exceeds anything MSHA or any other state agency has and will involve the Department in “micromanaging” training and employment decisions. While the Department will certainly respond to this criticism by asserting that it is not their intention to assume such authority, the language of the section should specifically limit the Department’s authority so there is no doubt about its scope.

**Section 105(10)** authorizes the Department to conduct research and **Section 105(15)** permits it to receive monies for research. Currently the Department does not do research and does not have the resources to do so. This section could unnecessarily result in an expansion of the BDMS’s staff when research is already performed by NIOSH and universities. There are better ways to spend limited resources than to create a duplicative research program within the Department. There is no need to funnel money through the Department if it can go directly to the research entities.

**Sections 105(11) and (12)** grant the Department authority to approve “technology, methods, materials, machinery, equipment, systems, tools, devices, processes and plans.” To say that this authority is unnecessarily broad is to understate the matter by a considerable degree. These sections would give the Department the authority to approve everything in or at a mine from a hammer to a preparation plant. They would give the Department the authority to approve how mining is conducted. For example, if the Department determined it did not like full face continuous miners on principle, it apparently could prohibit their use, even though they are used throughout the country. Moreover, by the very terms of proposed Section 105(12), mine specific approvals have no “precedential effect.” This provision raises the possibility of the Department approving a piece of equipment or process or mining plan at one mine but not another. It raises a concern about arbitrary, unequal and unfair treatment of similarly situated operators. This authority is entirely too broad. Instead of expanding the Department’s authority to approve equipment, plans, etc., the Department should be required to honor without further review all approvals obtained from MSHA. That would avoid a frustrating, conflicting and costly state approval process that adds little if anything to mine safety.

**Section 105(12)** also provides that the Department may only make mine-specific approvals of new technology, methods etc. that “meet or exceed the protections afforded by this Act or the regulations.” While a similar provision currently exists in Section 702 and in federal law, the problem with that language has been demonstrated in the Eighty-Four Mining variance case where the operator sought to adopt a federally required method of examination and the Environmental Hearing Board and ultimately the Department compared the method not only to the requirements of the Act but to federal law, contractual provisions, and mine practice, resulting in the denial of a variance on that basis. Further the literal application of this sort of language would, for example, prevent the granting of shelter hole spacing greater than the 80 feet

in the statute, despite the fact that the statutory provision is outdated and fails to take into account the safety disadvantages of the application of the existing rule. Finally, Section 101(c) of the federal act, 30 USC 811(c), permits approval of variances where application of the existing provision creates a diminution of safety. The Department's draft contains no such provision.

**Section 105(14)** permits the establishment of an abandoned mine map repository. The Department already has that authority. The Department needs to fulfill its existing responsibility.

**Section 105(16)** authorizes the Department to assess civil penalties. Unlike with MSHA, the civil penalty provisions proposed by the Department contain absolutely no criteria, factors, guidelines or procedures for assessment of civil penalties.

**Section 105(17)** would give the Department the power and duty to encourage and promote industry-based mine rescue capabilities. This is a worthy goal because it is an area that needs additional resources because of the substantially reduced number of mines and operators in the state. However, it is clear from a reading of all the proposed amendments that the Department intends to expend its new and expanded resources on punitive enforcement measures rather than mine rescue activities.

**Section 105(18)** authorizes the Department to provide training to miners and those who wish to become miners. This is a worthy goal in light of the fact that the workforce in the Pennsylvania is rapidly nearing retirement age and there will be less experienced workers entering the mines in significant numbers in the next few years. This is an area where the Department should concentrate its resources.

**Section 105(21)** provides the Department with broad "catch-all" authority to administer and enforce the act. Given the expansive scope of the authority already provided to the Department, Section 105(20) is unnecessary and is expected to be used in the same fashion the Department has used its so-called "discretionary" authority in current Section 123 of the Mine Safety Act. Current Section 123 has been used historically by inspectors to issue orders that have not been authorized by the Mine Safety Act.

### **Section 106 – Mine Safety Board**

Section 106 would create a Mine Safety Board to promulgate regulations. We have substantial problems with a Board that will promulgate regulations over and above what is already provided under the federal regulations in 30 CFR Part 75. We recognize that the Pennsylvania substantive mine safety requirements need to be updated, but we also believe that the most efficient way to do that is to adopt the federal standards in 30 CFR Part 75. This provides a number of benefits. It avoids a protracted process of the development of regulations in Pennsylvania when there is no demonstrated need for Pennsylvania specific regulations. It avoids a duplication of effort with the development of federal regulations and permits an allocation of industry, government and

labor resources to ensuring compliance with an already comprehensive body of standards and to the development of mine safety programs at mines. The development of an entire new body of regulations would require a significant devotion of limited resources. Also, adoption of the federal standards reduces the potential for disputes about the meaning of regulations. The adoption of any new body of regulations is very likely to be accompanied by a considerable amount of disputes and litigation over the meaning of the regulations. That would be eliminated by adoption of the federal standards. There is no need to have independent state standards because statistically states with dual mine safety enforcement programs are not safer than states that have only federal standards.

The Mine Safety Board would be comprised of three members, one from the Department, one representing operators nominated by the trade association representing bituminous operators (currently PCA) and one from the major employee organization representing bituminous coal miners (presumably the UMWA). The Board will make decisions by a simple majority.

There are fundamental problems with the concept of this Board. It is too small. Three persons are too small a number for the workload envisioned. It will not by its nature result in well-crafted regulations. One of the parties can be overruled at any time by the Department and the other party. This eliminates any incentive for the Department to take into account the position of one of the parties because it will be unnecessary as long as the other party is in agreement with the Department's position. This makes the rulemaking process a political one. Given the contentious nature of the issues that will come before the Board, and the fact that the Board's regulations are exempted from the regulatory review process, it is necessary that any rulemaking authority take into account the positions of all the parties.

The Board also has broad power to revise provisions of the law by regulations and may, by regulation, address areas not covered by the law.

**Section 106(e)(2)** provides that no regulations adopted by the Board shall reduce or compromise the level of protection afforded to miners. As discussed above, this is similar to language in the federal act but creates a number of problems particularly with respect to updating the law to take into account changed and improved technologies.

**Section 106(e)(3)(i),(ii) and (iii)** exempt the Board's rulemaking from oversight under the Regulatory Review Act, the Sunshine Act and the Administrative Code. Further, there are no requirements for this Board to publish proposed rules, solicit written public comments, have public hearings, or publish final rules with justification for the final language and requirements. The failure to have a systematic method of input from interested parties is a serious matter, especially given the fact that the draft seeks to exempt the Board (and the Department) from any procedural requirements or oversight. Having a process that allows interested parties a public airing of their concerns and effective oversight is the minimum to be expected. This Board has none of that, but it is necessary given the fact that two individuals will be deciding mine safety issues under the proposed Board.

SB 949 contains no specific provision concerning review of promulgated rules. Judicial review is necessary given the unfettered authority allocated to the Board.

**Section 106(g)** permits the Board to identify by regulations positions not listed in the act requiring a certificate of qualification. No criteria or guidelines are provided in the act. This raises the issues, addressed earlier, of arbitrary action by the Board and the micro-management of qualifications for every position in a mine. This is totally unnecessary.

**Section 106(h)** gives the Board the authority to establish fees “sufficient to cover the Department’s cost to administer this Act.” This language is sufficiently broad to be construed to permit the imposition of fees to fund the entire operation of the BDMS with respect to mine safety. Given the fact that the mining industry already pays substantial taxes to the Commonwealth in the form of business taxes as well as in the form of income taxes from its employees, such creation of additional taxing authority is entirely inappropriate. Also, this section is poorly drafted because it proposes that once established such fees will automatically increase each year by the amount the CPI for the most recent calendar year exceeds the CPI for 1989; rather than by the amount the CPI for the most recent year exceeds the CPI for the second most recent year.

Proposed **Section 107** adopts the requirements of 30 CFR Part 77 with respect to auger mines and the surface areas of underground mines. Leaving aside the question of whether this is the appropriate place in the act or the appropriate method to adopt these federal rules as state requirements, this highlights the inconsistency that pervades the entire Bill. The Department is willing to adopt in its entirety a set of federal regulations covering auger mines and surface work areas of underground mines but it is not willing to do so with respect to underground issues. Such inconsistency undermines any argument that the federal regulations are not adequate and emphasizes that the Department is merely seeking in SB 949 to expand its authority without any concomitant improvement in mine safety. It would be much more efficient and cost effective to adopt the current federal underground mine safety regulations at 30 CFR Part 75 by reference and require the Board to adopt future federal amendments and additions to Part 75 promptly after they are published as final regulations in the Federal Register. Finally, there is no reason to give the Board authority to promulgate additional and different regulations than the federal regulations as proposed. That will lead to inconsistent state and federal enforcement.

### **Section 108 – Safety Issues in Permitting**

This Section is another example of poor drafting. It jumbles provisions relating to safety issues in reviewing and acting on permit applications with provisions relating to unilateral modification, suspension or revocation of existing permits.

This section would give extraordinary powers to the Department that go far beyond the recommendations of the entities that investigated the QueCreek Mine inundation, without defining any limitations or criteria for use of such powers. For example, mining permits can be denied if DEP determines that a “contemplated activity may constitute a threat to the health and safety of workers or the public.” No guidance or definition is provided for this phrase (e.g. Could mine subsidence be construed as a “threat” and therefore be the basis of a permit denial?).

There is no requirement for DEP to show a finding of cause for exercising this action, and the permittee is not entitled to notice or an opportunity for a hearing. Because the permits are issued under the Surface Mining Conservation and Reclamation Act, which specifically requires notice and a hearing before the Department can suspend or revoke a permit, as well as other statutes; this provision is in conflict with the Surface Mining Act. This section also permits the “unilateral” imposition of mining conditions by the Department. This section should be deleted or amended to limit safety considerations to affording the BDMS thirty days to comment on the permit application provisions dealing with the location of mines in the vicinity of the proposed coal mining operation and proposed mine barriers.

### **Section 110 - Accidents**

Section 109 addresses the Department’s authority in the event of accidents at a mine. This is where the expanded definition of “accident” in Section 104(1) becomes an issue. It is a considerable expansion of the Department’s authority under current Section 401 of the Mine Safety Act.

Proposed **Section 110(b)(1)** would give the Department the authority to supervise and direct mine rescue activities. As discussed previously, that represents a potential conflict with the responsibility placed on the operator and the authority of the federal government.

Also, **Section 110 (a)(3)** requires the operator to preserve evidence of the accident but does not permit, as federal law does, actions to protect life or equipment from further damage, except (as provided in SB 949) total destruction. Moreover, given the broad scope of the definition of accident and the fact that mines operate 24/7, the Department will have to add additional resources to make sure its personnel are available.

**Sections 110(a)(4) and 110(c)** require the reporting of accidents, occupational injuries and illnesses. Reporting of occupational illnesses is not something that is covered by the existing Mine Safety Act. The draft indicates that MSHA’s forms will be acceptable, which is the current practice. Again this emphasizes the fact that many of MSHA’s requirements are simply adopted by the Department and calls into question their failure to simply adopt MSHA’s 30 CFR Part 75 in total.

### **Section 111 – Mine Officials Certifications**

Section 111 of SB 949 would authorize the Department to prepare, administer and evaluate examinations for certification as mine foremen, assistant mine foremen, mine examiners and mine electricians and to issue certifications to individuals that have meet established criteria. Under the current provisions of Article II of the Mine Safety Act, these functions are performed by Boards of Examiners. We prefer the current practice because the Board’s of Examiners are made up of a miner, a mine inspector, and a representative of mine management. PCA and the UMWA have agreed upon amendments to the examination and certification provisions of Article II of the Mine Safety Act, which amendments are included in draft legislation.

## **Section 112 –Classification of Mines as Gassy**

We do not believe that all mines are gassy. The Department proposes to eliminate the exemption for non-gassy mines in current Section 221(d). This is simply a method of expanding the Department's control over the presently non-gassy mines. We recognize that the federal regulations do not have an exemption for non-gassy mines. If 30 CFR Part 75 were adopted, we would not object to elimination of the exemption for non-gassy mines.

## **Section 113 – Reports of Mines**

Proposed **Section 113(a)** would require underground mine operators to submit a “Deep Mine Operator’s Questionnaire” to the Department prior to opening or reopening a mine and immediately upon discontinuance of operation of a mine. One problem with this provision is that it provides no indication of what kind of information will be requested in the Questionnaire. Without the statute defining and limiting the scope of this provision, the Department can ask for any information. Without knowing the scope, intent and purpose of the Questionnaire, it is impossible to provide effective comments. Nevertheless, the proposed requirement to “immediately” update the Questionnaire upon the change of any information in a submitted questionnaire is unreasonable and arbitrary, especially given the punitive nature of the proposed civil and criminal penalties. Also, “discontinuance of the operation of an underground mine” is a vague term. Does it apply to temporary interruptions of operation?

Proposed **Section 113(e)** is overly broad and undefined. It would permit the Department to ask for any type of information and make all the received information available to the public. If the Department’s objective was to draft a reasonable proposal it would have limited the information the Department could request to information required to be maintained under the act and would have included provisions for operators to identify and for the Department to protect confidential information and other documents that should not be made available to the public, such as personnel records and HIPPA protected information, as is the case with other statutes administered by the Department.

Proposed **Section 113(c)** would require operators to submit “quarterly” reports to the Department containing specific information on coal production, employee work hours, and reportable injuries and accidents for the previous “month” (which is obviously a mistake). This section also provides that this reporting requirement can be satisfied by submission to the Department MSHA Form 7000-2. This is another example of selective incorporation of federal requirements into the state mine safety program. Instead of this selective incorporation, combined with inconsistent state standards that often were crafted to address specific points of disagreement with Department interpretations and policies, the state should simply adopt all of 30 CFR Part 75.

## **Section 115 - Direction of Mine Rescue Work**

This proposed provision could result in the creation of serious hazards because it will create jurisdictional conflicts between operators, MSHA and the Department and it will create

confusion regarding the line of authority regarding decision making at critical times. The operator cannot abrogate the authority to make decisions regarding its mine to a government entity unless there is an official order causing the operator to do so. There is a mechanism in the federal law for that to occur, but it is designed to be used only when there is no operator available to assume control of the mine. If the state assumes control, they must also assume the liability of miscalculation and mistakes

The Department cannot be permitted to assign company mine rescue teams to state mine inspectors for mine rescue and recovery as this proposal suggests. The Department cannot be allowed to direct operator mine rescue teams. The Department is not assuming responsibility or liability for the well being of operator employees or the consequences for the work they perform on operator property.

### **Section 116 – Recovery of Monies**

This proposed section should be deleted. Alternatively, it should be clarified as to what expenditures could be reimbursed. As it stands, it gives the Department a blank check. At most, recovery should be limited to out-of-pocket expenses.

### **Section 117 - Mine Safety Fund**

A fund that includes money from criminal fines and civil penalties collected as a result of mine safety violations is an inherently questionable idea. There is a potential for enforcement personnel to be over zealous because the proceeds could be paying their salaries. Out-of-pocket mine rescue expenses of the Department should be returned to the BDMS. Fees, fines and civil penalties should only be used for safety training of miners and persons wishing to become miners.

### **Section 120 – Mine Maps to be Made Available to the Department**

This proposed new section would authorize and direct the Department to obtain and copy all maps of mining conducted in Pennsylvania. Again, this is a very broad provision without any limits or safeguards. It would be applicable to maps held by private persons, universities and museums, as well as historical map archives of coal companies. Some maps may contain proprietary information regarding future mining plans. Taking these maps, even temporarily, could constitute a taking for which compensation may be required. Also, there should be a limit on the amount of time the Department can keep a map, such as 30 days, and the Department should be obligated to return the original maps to the owners in the same condition as when they were obtained by the Department.

### **Section 121 – Mine Map Repository**

We agree that it is appropriate for the Department to maintain a mine map repository. However, this is not a new obligation. The Department has been required to maintain final mine maps since 1911. In order to “update” the act, this section should also require the Department to make the maps available on the internet.

**ARTICLE II**  
**GENERAL REQUIREMENTS FOR UNDERGROUND BITUMINOUS COAL MINES**

**Section 201 – General Safety Requirements**

**Section 201(a)** provides that all work must be done in a safe manner. This proposed section is too broad; especially given the severity of the proposed civil, administrative, and criminal penalty provisions of the act. Also, the standard is too subjective.

**Section 201(b)** provides that all equipment must be maintained in a safe operating condition. This proposed section is also too broad and the standard is too subjective.

**Section 201(c)** provides in part that no person shall be employed as a mining machine operator, shot firer or miner, unless that person holds a current, valid certification from the Department to work in that capacity. However, SB 949 does not specify how the Department will determine the qualifications of miners or how they will be certified. See Sections 212 and 214. Also, SB 949 does not specify the qualifications for or how mining machine operators or shot firers will be certified to work in that capacity, unless the only qualification that is intended is to be qualified to take methane readings. See Section 217.

**Section 201(c)** provides in part that no person may supervise miners unless that person holds a certificate as a mine foreman, assistant mine foreman, mine electrician, or mine examiner. There is no reason to impose this restriction. An experienced person can supervise miners without compromising safety. We view this requirement as an additional means to punish people if an accident occurs, as it will allow the Department to decertify the “supervisor.”

**Sect 201(d)** provides that an uncertified individual who is under ground must be in the physical presence and under the direct supervision of a certified miner at all times. This physical presence requirement is new. It is unrealistic and unreasonable. Historically, trainees have not been required to be in the physical presence of the person supervising them at all times. It creates an impractical and unreasonable situation with shuttle car operators, bolters, and other similar situations. No provisions are made for visitors and technical people. There is no provision made for service personnel or for management personnel not performing the work of a miner.

**Section 201(e)** imposes a general duty on operators and mine officials to comply with the act and regulations and would impose a general duty to cooperate with the Department in implementing the provisions of the act and effectuating the purposes of the act. Historically, cooperating with the Department has meant doing what the Department tells you to do, even if you disagree. It is not being uncooperative to disagree with the Department, but we expect this provision will be used as a bludgeon. This cooperation requirement is unnecessary, given the obligation to comply with the law, regulations and permit conditions.

**Section 201(g)** provides in part that the operator is jointly and severally liable for all contractors. This is a change from existing practice. Again, this is in conflict with MSHA rules and will create confusion and an unworkable situation. Contractor employees are under the direction and supervision of the contractor, and should not be the responsibility of the mine operator. This section should be made consistent with federal law under which contractors take responsibility for themselves.

**Section 201(g)** also provides in part that mine officials, miners and other workers shall comply with, among other things, all provisions of laws that are in harmony with the act and must comply with rules and regulations of the operator. The in harmony with the act requirement is too broad and too vague. Also, making operator rules enforceable under the act will discourage operators from going beyond the requirements of the act for fear that they are creating new liabilities under the act for anyone that fails to comply with an operator rule.

### **Section 206 – Qualification and Certification**

This is an area of the act that the Department could have amended to help with the current problem of a shortage of certified mine foremen and assistant mine foremen, but they did not do so. The Department could have addressed reciprocity for certified miners from other states, which is an issue that labor and management both favor, but it failed to do so. It's clear that the Department hasn't been following this issue. When written in 1974, the original revision presumed that certified persons would come from the ranks of the hourly workers. Therefore, having one path to attain the background necessary for certification was acceptable. Thus, the requirement for four years experience and three of those four years being at the face for qualification as a mine foreman or mine electrician may have made sense at that time. There was no training requirement other than ten days of time spent with a supervisor. This is no longer the case. Training has become a means used in all businesses to fast-track people. Coal operators are prepared to develop training programs to bring in potential new foremen, yet there were no changes made to this law to provide for alternatives of training versus experience. Also, the Department removed the definition of "working section" in subsection (a), for purpose of qualifying experience, and made it a general definition applicable to the entire act. That definition should not have been removed. The definition should be applicable to Section 206 only.

Similarly, the requirement that engineers must have three years working in the working section to qualify for certification as mine foremen and mine electricians is no longer reasonable. It is impracticable, inefficient and a waste of ability and time to have an engineer work three years in a working section. Their college education and training at the mine should count towards getting them certified. If they are not certified, under the act as the Department proposes to amend it, they will have to be accompanied by a certified person every time they go under ground.

Also, if this proposed section of SB 949 is enacted and Article V is enacted as proposed, there will truly be a supervisor shortage.

**Section 206(g)** has been amended to delete the requirement that the examinations for all certifications be written. We have heard that this provision has been modified to permit the

board to use an interview as part of the examination process to be able to prevent people from obtaining certification even though they passed the exam. Department personnel have stated that this provision could be used as a mechanism to prevent certification of people who were temporarily decertified or otherwise out of favor. We hope these rumors are not true. We assume that “written” was removed so the exams could be taken on a computer. This section should be clarified as to the type of examination that will be given.

### **Section 210 – Emergency use of a Mine Examiner to Act as an Assistant Mine Foreman**

The Department proposes to amend Section 210 to eliminate the ability to use an uncertified person with three years experience to act as an assistant mine foreman in an emergency. There is no reason to make this change. This provision has not been misused by operators.

Also, subsection (a) of the amendment as written is not clear as to how often during a year a mine examiner can act for one week as an assistant mine foreman.

The proposed amendments to Section 210 are viewed as an opportunity to expand powers of the Department and hinder the operation of the mine, given that there have not been problems with abuse of Section 210.

**Section 210(c):** The issue of foreman trainees has been confusing for the industry for some time, and SB 949 is an opportunity to clarify the requirements. The failure to clarify this section perpetuates the confusion. It needs to be rewritten and clarified. A foreman trainee should be able to receive instructions from a foreman and act on them. A foreman trainee should have the ability to act as a crew leader, which will include safety responsibility, except that a certified person would be required to make legally required examinations.

### **Section 212 – Qualifications for Certification of Miners**

This section should specify the qualifications for certification as a miner instead of giving the Department unlimited discretion to establish the qualifications.

Current **Section 212(c)** is proposed to be deleted in the Department’s draft. Subsection (c) currently provides an exemption from the requirement to be a certified miner for supervisory and technically trained employees of the operator whose work contributes only indirectly to mine operations, employees who are not performing the work of a miner as defined in the act, and noncertified miners. There is no reason to delete this exemption.

### **Section 215 – Unlawful to use Noncertified Miners**

Current Section 215 is not proposed to be amended by SB 949. However, with the proposed redefinition of miner and proposed elimination of provisions for the use of technical personnel [Section 212(c)], this provision takes on a new meaning and is unacceptable.

## **Section 217 – Certification of Mining Machine Operators and Shot Firers**

This section is proposed to be amended to delete an existing provision which allows a mine foreman in emergency situations to designate, temporarily, a competent person or persons, to act as mining machine operators or shot firers. There is no reason to delete this provision. Operators should not be limited in the means which they have available to respond to emergencies. Also, this section should be amended to clarify what equipment will be considered to be a “mining machine.”

### **Sections 218-220:**

Our major concern is not the placement of responsibility on the operator or superintendent, but rather the ability and resources of the Department to manage such authority.

## **Section 218 – Employment of Mine Foremen**

This provision now makes the operator and the superintendent responsible for the mine foreman’s actions. We do not understand the reason the superintendent was added. The QueCreek reports said operators should be held responsible, not superintendents. Additionally, the concept of a single person being responsible for an entire mine is outdated; especially with large mines. Only the operator should be responsible for the entire mine.

## **Section 219 – Employment of Mine Electricians**

The Department proposes to amend Section 219 to make the mine electrician responsible for all electrical apparatus in the mine and at surface areas of a mine. Including surface equipment is new. Also, the Department proposes to change the section to require a “certified electrician,” rather than a “qualified electrician.” Currently certification for mine electricians is directed at underground mine electrical apparatus. Thus, making certified mine electricians responsible for surface apparatus is inappropriate. Furthermore, there is no need to expand the state certification to cover surface electrical apparatus because surface electricians are certified by MSHA. The Department should be required to recognize the MSHA surface electrician certifications. Surface electricians currently do not have mine electrician’s certification which will be required by this section. Surface electricians currently have MSHA certification for high, medium and low voltage work. This MSHA certification has proven effective and additional certification is not needed. Alternatively, the MSHA certifications should be recognized.

## **Section 220 – Employment of Assistant Mine Foreman**

Mine foremen, assistant mine foremen, mine examiners and mine electricians should be able to supervise more than two uncertified persons. Also, Section 220 is potentially in conflict with Section 211, which provides that a certified miner can supervise two uncertified miners. If an assistant foreman supervises two certified miners, can each certified miner supervise one or two uncertified miners?

## **Section 221 – Mine Foreman; Ventilation**

**Section 221(b):** This provision is unclear and represents a serious problem, depending on how the word “room” is interpreted. The last sentence is very unclear and ripe for problems.

**Section 221(c):** By deleting the second sentence of former Section 221(c), this subsection is now ambiguous. As revised, the first sentence requires weekly air measurements and the second sentence requires a record of daily measurements.

**Section 221(d):** Since the mine is proposed to be defined as everything except sealed areas, if you have a fan failure of greater than 15 minutes, you must examine every inch of the mine before you resume operations. If this includes bleeders, fenced off areas, sumps, etc., a re-exam will take a very long time. Also, given the proposed expansive definition of “mine” to include surface areas, does withdrawn form the mine mean to go off the mine property? Probably not, but it is not clear do to poor drafting.

More importantly, the Department failed to amend this section to make it clear that when persons are withdrawn from the mine they may ride out on motorized equipment. MSHA currently allows the miners to ride out, but the Department does not. Withdrawal should be allowed by the quickest safe means.

## **Section 222 – Mine Foreman; Safety of Working Places**

**Section 222(f):** It is not clear whether the “approved gas detection devices” can be approved by MSHA, or the Department, or both. The last sentence concerning tools is outdated. It should have been deleted.

**Section 222(h):** SB 949 would delete this subsection. We believe this removal is intended to support the Department’s interpretation that the act requires a pre-shift examination of the entire mine, a point of contention between the Department and mine operators. Under these circumstances, removal of this subsection is inappropriate. In any event, the travel ways are examined under MSHA requirements.

## **Section 224 – Mine Foreman; Drainage**

**Section 224(a):** The proposed change of “working places” to “work areas” greatly expands the areas from which water must be drained or pumped. There is no safety justification for this proposed change.

**Section 224(b):** The Department should recognize and the law should provide that longhole drilling is an accepted practice that can be performed without a mine specific plan approval. This provision significantly broadens the existing law by changing the scope from section to any location in the mine. Further definition of criteria is needed with regard to where it would be appropriate for the Department to extend the set backs.

This section is loosely drafted. Although the intent of this provision may be rational and realistic, it is entirely too broad. Too much is left to the interpretation of the Department.

### **Section 225 – Mine Foreman; Employment of Competent Persons**

This is a new provision requiring ALL equipment operators to complete a training program approved by the Department. An operator should not be required to seek Department approval for such a training program. This is another instance in which the MSHA Part 48 Task Training requirements should suffice. Operators are already required to conduct task training under 30 CFR 48.7. The Department's proposed provision is vague and broad. It is not clear what tasks will require training or the nature of the training. There is no reason to develop a separate state task training program that may be inconsistent with or duplicative of MSHA training under Part 48. MSHA task training is adequate.

### **Section 226 – Mine Foreman; Inspections and Reports**

**Section 226(a):** The Department proposes to significantly amend this section by expanding existing requirements to require two (rather than one) visits each shift by the mine foreman (or an assistant) to each work area (rather than each working place.) "Work area" is defined vaguely and broadly as any place at the mine where work is being done. It is unrealistic to require two visits per shift to each work area. Visiting outby areas twice a shift will require a significant increase in certified personnel. This section could be construed to require two visits per day to areas where the only work is conducting examinations, areas where surveyors or engineers are working, and surface areas where work is being done. There is no good reason for these proposed changes.

There is also some ambiguity between subsection 226(a) and subsection 201(h) which requires an assistant mine foreman to closely supervise the miners and other workers in the working section. A working section (the area from the face back 1000 feet) might contain several work areas. Can the assistant mine foreman who has to closely supervise the miners in the working section be the assistant mine foreman who visits each working area in that working section, as defined in the draft, twice during the shift?

**Section 226(b):** Currently, this section requires a foreman to record any dangers he observes and dangers reported to him by assistant mine foremen and mine examiners. The revised provision requires the foreman to record any danger reported to the foreman, but perhaps not observed by the assistant mine foremen or mine examiners. This section expands the recording and record keeping requirements placed on the mine foreman to record not just conditions he observed in his examinations, but also to include those conditions reported to him by anyone. He is required to report based on the opinion of anyone as to what they consider to be a danger (even though they are may not be qualified to make examinations) or anyone who may have an ulterior motive. This section requires the mine foreman to record the danger and take action to correct it. This is a totally unreasonable requirement as written. The mine foreman should be responsible only for those conditions he observed or those reported to him by his subordinates.

**Section 226(c):** This is an existing provision which is proposed to be amended to require redundant signing of books by eliminating the ability of the mine foreman to delegate assistant mine foremen to sign books. This change will require the mine foreman to visit each portal at a multiple portal mine to sign the books. There is no good reason for this proposed change.

### **Section 228 – Duties of Mine Examiners**

This section is impacted by the proposed amended definition of “shift” in the definition section. That proposed amended definition would reverse a recent Commonwealth Court decision adverse to the Department’s position. The Department’s position created a conflict between the timing of pre-shift examinations between MSHA requirements and Department requirements. Instead of accepting the Commonwealth Court’s ruling, the Department is seeking to avoid it by amending the Mine Safety Act.. Also, the language of this section is vague and should be clarified. Currently, it is not clear what is required to be inspected. No effort was made to clarify it.

**Section 228(a):** Coal producing shift is not defined in the amended act. It should be. Changing the requirement to inspect the roof, face and ribs in “working places” (currently, the face area where coal is being mined) to “working areas” (proposed to be any place at the mine where work is being done) creates ambiguity and evidences poor drafting. Since working area is where work is being done, does that mean that areas currently to be inspected as a working place do not have to be examined if persons will not be working there?

### **Section 229 – Management of the Mine**

This provision should not be deleted as is proposed in SB 949. The existing provision recognizes that mine management, not the Department, has the right to operate its mines and direct the work force.

### **Section 230 – Mine Supplies; Countersign Reports**

**Section 230(a):** This section requires superintendents to keep on hand at each mine materials and supplies required to preserve the health and safety of the employees. It requires the operator to demonstrate that the minimum requirements are satisfied, but does not provided objective criteria. This is another instance where the federal law already provides a parallel provision, which is clearly worded and defined.

**Section 230(b):** This section is proposed to be amended to require the superintendent to countersign all books once a week, not just the mine foreman’s book as is currently required. The provision is intended to make the superintendent as responsible/liable as the mine foreman. The provision is also unclear as to whether the superintendent is required to countersign every entry for each day, which would be very burdensome. The mine foreman already countersigns the other books. Thus, having the superintendent countersign only the mine foreman book is

appropriate. This proposed requirement is unnecessary and would impose an unnecessary, duplicative and unduly time consuming requirement on mine superintendents.

### **Section 231 – Qualifications and General Responsibility of Superintendents**

**Section 231(a):** SB 949 would add this subsection to require the superintendent to have mine foreman certification. The only reason to require a mine superintendent to be certified as a mine foreman is to give the Department the ability to decertify superintendents.

**Section 231(b):** This proposed section is another example of poor drafting. It would prohibit one person from being the superintendent at two mines, but would not require a superintendent at a mine.

### **Section 235 – Mapping Requirements and Surveying Standards**

Substantial amendments to the current Mine Safety Act have been proposed in this section.

**Section 235(a)(1):** Requiring changes of mine ownership and dates of those changes to be included on the map title block would be in some instances impossible to do. Some mines are over 100 years old and no records are available of the ownership changes and dates.

**Section 235(a)(5):** It may not be possible to show all surface pits and all auger holes in each coal seam because most surface mines were reclaimed without the extent of pits and the extent of auger holes surveyed or even noted on a map.

**Section 235(a)(7):** The name or number of each butt, room, or section needs to be clarified to address active areas of the mine only. Some mines are over 100 years old with abandoned areas that may not have such areas identified.

**Section 235(a)(8):** Showing numbered air splits will cause confusion on the map by adding an enormous amount of text. Ventilation controls and air current direction would be adequate to identify the mine ventilating system. There is no benefit to number the air splits.

**Section 235(a)(13):** Clarification is needed as to the “number of each survey station”. It is assumed that a survey spad location identity tag (i.e. 16+49) is adequate, but it is not stated as such. There is no reason for any other identification of a survey spad.

**Section 235(c)(6):** Clarification is needed as to excavations “adjacent to” the permit line or property boundary lines. How close are workings to be to be considered adjacent?

**Section 235(d):** The proposed requirement that prior to areas being sealed, the operator or superintendent must verify that the map of the sealed area meets the requirements of this act will be impossible in some cases. Some mines are over 100 years old and portions may be flooded and impossible to verify a survey, but yet that area is planned to be sealed from the active portion of the mine.

## **Section 240 – Duties upon Abandonment of Mine**

Substantial amendments have been proposed for this section.

**Section 240(a):** A qualification statement made by the registered engineer should be acceptable if portions of the map were under the direction of another registered engineer. Maps should not be required to contain a dated signed statement by a company or corporate officer. The only logical use for this requirement is to subject the company officer to civil or criminal penalties if an accident occurs. All relevant information gathered for the map is required to be described in the narrative. The corporate official is already required to sign the narrative and therefore this requirement is not necessary.

The engineer is certifying the information on the map and should be specific in making any statements necessary about the accuracy of the adjoining workings; especially if a certified final mine map was not kept on file by the Department and is not available.

The requirement that the map be in a format acceptable to the Department is vague and potentially subject to abuse and different interpretations. A format or formats should be specified in the act.

Requiring submission of a “final map” every time a mine is inactive for a period of thirty days could result in confusion as to which map is actually the final map for a mine. Operators should be able to obtain temporary inactive status and submit a “current” map when the inactive status will be temporary.

**Section 240(b):** Failure to timely submit the map should not be a felony. If no one submits a final map, it is unclear who is criminally responsible, the operator, superintendent, or company/corporate officer? Also, subsection (a) imposes certain obligations on the superintendent, the owner and the operator. It would be less confusing if the obligations in subsection (a) were imposed on one person or entity.

The final sentence on cost recovery should be deleted. Cost recovery is usually provided in civil penalty provisions of the Commonwealth’s environmental laws, but in this draft the Department elected not to provide any factors for determination of civil penalty amounts.

## **Section 241 – Survey by Department**

The existing and proposed amended section permits the mine inspector to require a mine operator to have a new mine map made, if the inspector has reasonable cause to believe the map is inaccurate. A decision of this magnitude should not be left to the mine inspector who may not have any professional training regarding surveying. This is a severe measure and should not be imposed without a compelling reason demonstrated. This section should expand on the reasons that this could occur, give guidelines for causing it to occur, and afford the operator a hearing or a conference before requiring it.

## **Section 242 – Ventilation Requirements**

Federal requirements are adequate. This provision should be limited to areas where people work or travel (underground work areas), which is what MSHA requires.

**Section 242(b):** This section mirrors the federal requirement without adopting it. This is another example why 30 CFR Part 75 should be adopted in its entirety.

**Section 242(c):** Given historical disagreements over the interpretation and application of this subsection, it should have been clarified so that it is clearly consistent with 30 CFR 75.350, but it was not.

There is no provision here for using belt air at the face using CO monitoring. This should be incorporated in the amendments. There is no provision as to the required spacing of the doors in the stoppings when mobile belt conveyors are used.

**Section 242 (d):** This section requires a 1% percent methane limit in each working face. This is consistent with the wording in the federal law. However, the definition of “face” has been changed in the Department’s proposed amendments. Now it includes inactive as well as active faces. The definition change makes this rule much more stringent and unworkable in mines that liberate even moderate amounts of methane. The definition of face should conform to federal law.

**Section 242(e):** This provision should mirror MSHA requirements that permit 1 ½% methane in a return (with conditions), and 2% with continuous monitoring, and also permit 4.5% methane in bleeder returns.

## **Section 243 – Crosscuts and Stoppings**

Section 243 contains requirements for obtaining Department approval for certain crosscut distances and widths, as well as materials used to construct stoppings. These provisions are outdated and unnecessary. Roof control methodology and pillar design have evolved from an engineering perspective, and they are much more involved than the simplistic requirements of this section. The roof control methods are documented in the plan required by the federal regulations. This state requirement should be deleted, or the federal roof control plan incorporated.

**Section 243(d):** Limiting excavations to 18 feet before an air connection is made; even if there is adequate ventilation will severely hinder the mining cycle and affect productivity. As proposed to be amended, this subsection is not well written. It is not clear what the approval process is or what limitations will apply.

### **Section 245 – Line Brattice**

Section 245 has requirements for line brattice that are outdated and redundant. Subsection (c) requires approved flame resistant material. The state should accept flame resistant material acceptable to MSHA.

Because the use of line brattice is site specific, this is one section where the reference to the mine inspector should not be changed to the Department.

### **Section 246 – Auxiliary Blowers and Fans**

This provision, like many of the other provisions, removed the 60-day time frame for Department action on a request to use section fans. There needs to be a provision for all approvals to be done in a timely manner, such as, 60 days.

### **Section 247 – Unused and Abandoned Parts of the Mine**

This provision is poorly written and does not reflect the current common practice that sealed areas are not ventilated. The proposed amendment of Section 247 requires all sealed areas to be ventilated. This is at the least inconsistent with the concept of sealing. This section should be revised to make it clear that ventilation of sealed areas is not required.

### **Section 251 – Control of Coal Dust/Rock Dusting**

**Section 251(a):** This section is not proposed to be amended. The term “fine, dry, coal dust” is not defined. Arguably it does not apply to coal that is not in the form of dust. That would be inconsistent with federal requirements.

**Section 251(d):** This section is not proposed to be amended. It currently requires that rock dust samples be taken every two months. It is unnecessary and overly burdensome for the operators. It is also redundant because MSHA takes quarterly rock dust samples. This section should be removed.

### **Section 252 – Employees, Instruction of, Examination of Working Areas; Duties**

This section describes the requirements for testing of roof, face and ribs. A sentence was deleted that said that the test could be made by “any competent person for a crew.” This sentence should not be deleted.

### **Section 253 – Roof Support**

MSHA requires and approves a roof control plan. There should not be a separate state approval. This section should be amended to provide that approval of the roof control plan by MSHA shall

constitute approval by the state, or provide that MSHA approvals are binding on the state. This is especially important because roof bolting is becoming highly technical.

### **Section 257 – Preparation of Shots; Blasting Practices; Multiple Shooting**

**Section 257(a):** The Department proposes to amend subsection (a) to provide that only certified shot firers can handle explosives. The existing provision permits competent persons to handle explosives. Under the proposed amendment only a certified shot firer can transport explosives into a mine. There is no reason to make this change. There have been no safety problems with competent persons handling explosives. “Work area” should be more clearly defined to indicate it is the work area of the blast.

**Section 257(b):** Again, the Department proposes to eliminate the requirement that it review and act upon blasting plans within 60 days.

### **Section 259 – Transportation of Explosives**

The Federal ATF approves the explosives containers. There is no need for the Department to have separate approval.

**Section 259(b):** This subsection should be amended to make it clear that it does not prohibit use of locomotive or other self propelled equipment for pulling a car or cart carrying explosives.

### **Section 262 – General Shot Firing Rules**

The Department proposes to delete the last sentence of subsection (i). This sentence should not be deleted so that it is clear that if a shot is set off to create a fall, personnel are not required to go back into the area.

### **Section 263 – Hoisting Equipment; Duties of Operator or Superintendent; Hoisting Operations**

**Section 263(a)** requires in part that the hoisting engineer operate the empty cage up and down the shaft at the beginning of the shift after material has been hoisted. This is outdated and unnecessary. The requirement should be eliminated.

### **Section 268 – Clearances and Shelter Holes**

This section is outdated. It was relevant when coal was hauled on tracks, which is not the case any more. It should be revised to comply with 30 CFR 75.1403-9.

From an operator’s perspective, this was one of the critical provisions that needed to be revised, but wasn’t. Here again, 30 CFR Part 75 adequately covers the safety issue.

**Section 268(b):** This does not allow shelter holes on the non-clearance side of track. They should be allowed if a plan is submitted to MSHA or the Department and approved. This section

should also provide that both crosscuts and room necks may be used as shelter holes even if their width exceeds four feet. As proposed to be amended, only crosscuts would be allowed to be used.

### **Section 272 – Transportation of Individuals**

**Section 272(a):** This provision requires that a person be designated to supervise loading and unloading of mantrips and is probably not being followed or enforced since it was originally intended to be applied to belt transportation of personnel. This outdated provision should be deleted. Also, the existing requirements for illumination where belt transportation is used have been changed to require, instead, illumination at any loading and unloading location. Currently, section unloading points do not always have illumination.

**Section 272(b):** This section should provide that no person should ride under trolley wire unless the mantrip is covered or the wire is guarded in its entirety or the wire is greater than 6 ½' above the rail.

### **Section 273 – Conveyor Belts; Construction and Operation of Conveyor Equipment Underground**

**Section 273(a):** The test that the Department proposes is a test that nobody uses. If this test were applied, it would exponentially increase the cost of conveyor belts, or belts would not be available. This standard simply does not exist anywhere in the world! It is taken from a NIOSH (formerly Bureau of Mines) paper written in 1990. This paper formed the basis for a proposed MSHA rule that was withdrawn in 2001 as being unnecessary. Thus, this proposed test would require Pennsylvania operators to buy “PA only” conveyor belts. Obviously the belt manufacturers would have to have this belt tested at a lab (since the state doesn’t do this type of testing) and then submit the results to Pennsylvania for approval. Naturally there would be a premium for buying this belt since special runs would have to be done by the vendors.

**Section 273(b):** This requires all belt entries to be four feet high. Many mines have less than four feet of height and many mines even driven at four feet high have less than four feet due to heaving conditions. The sentence that the Department proposes to delete (allowing 3 feet of clearance if men are not transported on the belt) should not be deleted.

**Section 273(g):** The Department’s proposed amendment will effectively require all mines to install carbon monoxide (“CO”) monitoring systems. This will be costly for smaller mines.

MSHA has fire detection standards, while the Department has none. The state should adopt or follow the MSHA standards. The Department should be using the MSHA performance standards, which provide the operator with flexibility to determine compliance technology.

Point type sensors are adequate.

## **Section 274 – Blowtorches and Fuel**

The Department proposes to revise this section to eliminate the ability to use blowtorches in underground mines. The act still allows the use of oxygen and gas in underground mines for cutting. See Sections 275 to 278 of the Mine Safety Act as amended in part by SB 949. The prohibition on the use of blowtorches should be clarified so that it is not misconstrued to also prohibit the use of oxygen and gas for cutting. Also, it is not clear whether the use of propane torches is permitted.

## **Section 278 – Use of Oxygen and Gas**

**Section 278(e)** currently provides in part that no more than one unit consisting of one gas tank and one oxygen tank shall be permitted in one working section at one time. This existing provision should be changed because more tanks are needed on the section. Each shift may maintain their own tanks, and tanks currently available are smaller than their predecessors. With the new definition of working section, tanks normally maintained by outby personnel, may be considered to be on the working section.

This section also provides that when not in use the tanks shall be removed to a point beyond the last open crosscut. Now that working section is proposed to be defined as the area from the face extending back 1000 feet, going beyond the last open crosscut may still be in the working section. This is another example of poor drafting.

## **Section 280 – Reclassification from Non-Gassy to Gassy Mine**

The Department proposes to eliminate the distinction between gassy and non-gassy mines. It is not necessary to treat all mines as gassy. This is simply a method of imposing more power and control over existing and future non-gassy mines. Distinguishing between gassy and non-gassy mines has not been a problem in the past. However, if 30 CFR Part 75 is adopted, we would not object to elimination of the distinction between gassy and non-gassy mines.

## **Section 288 – Minimum Fire Protection**

This provision adopts the federal requirements for fire protection in 30 CFR Part 75. This incorporation by reference of the federal standards should also provide that future amendments to the federal standards shall be effective in the Commonwealth upon publication in the Federal Register as final regulations.

Adoption of the federal fire protection regulations by reference is another example why 30 CFR Part 75 should be adopted in its entirety. Pennsylvania operators want to be regulated by one set of safety requirements, not two with varying and conflicting provisions.

## **Section 290 – Mine Openings or Outlets; Roadways, Hoisting Equipment at Shaft Outlets, Sinking of Shafts; Limitation of Section**

This entire section is outdated and should be deleted. If it is not deleted, we have the following comments.

**Section 290(d):** This provision requires 5 main entries for a mine, thus eliminating existing provisions permitting 4 entries. This revision may be a problem in some circumstances. In mines where faults are encountered, four high entries are better than five entries and much more cost efficient. Also, it provides for better roof control because less area is open.

There is absolutely no reason for this provision. It may place a burden on the opening of new mines. In most cases it is not possible to provide for more than three mine openings. Once again the Department has created a conflict with MSHA requirements.

**Section 290(g)** requires a travel way of at least 4 ½ feet in all mines where the coal seam is less than 3 and a half feet thick. This provision should be deleted. This will be difficult and expensive for low mines.

## **Section 291 – Mining Close to Abandoned Workings**

This section currently deals with how close to a property boundary mining may be conducted when there are abandoned mine workings on the adjacent property. The Department proposes to change “property boundary” to “permit boundary” throughout the section. The proposed amendment should also provide that amendments to permit boundaries to account for changes in this section shall be treated as minor permit revisions.

The Department also proposes to delete the last sentence of this section, which provides for resolution of disputes as to the size of barriers between mines by the Department. The act should continue to provide a dispute resolution procedure.

## **Section 297 – Openings Abandoned After the Effective Date of This Act**

SB 949 would remove the clause “after the effective date of this act” which may be construed to allow the Department to take actions not previously authorized.

## **Section 299 – Ladders in Mines**

The Department proposes to amend this section to require back guards on the river side of river cells, which is not feasible.

## **Section 299.7 – Wash Houses**

This section requires operators to provide bath houses for miners and requires that they include adequate sanitary facilities. This section does not have a standard for what are “adequate”

sanitary facilities. In contrast, the MSHA regulations clearly spell out a standard – one shower head for every 5 employees; one toilet for every 10 employees. To avoid disputes and disagreements as to what are “adequate sanitary facilities” the MSHA standards should be adopted.

### **ARTICLE III RULES FOR THE INSTALLATION AND MAINTENANCE OF ELECTRICAL EQUIPMENT**

#### **Section 302 – Definitions**

**Section 302(1.1):** In the second line, “normal” should probably be “nominal.”

**Section 302(5) and (6):** The Department continues to have different definitions than MSHA for low and medium voltage. The Department’s definitions are out of step with the rest of the mining industry. The Department’s definitions should be the same as MSHA’s. See 30 CFR 75.2.

**Section 302(8):** The “approved” definition is overly broad.

**Section 302(18):** The definition of “flame resistant cable” includes the requirement that the cable have a P number embossed on the jacket. The requirement for a P number should be deleted. The Department should follow or adopt the MSHA provisions. The Department has no standards, tests, or laboratory. When a P number is required, the Department sends operators to MSHA for testing. Many times operators have to pay extra and/or experience extended delivery times for a P number to be placed on the cable jacket of the exact same cable that is used in other states. This issue is further complicated by the definition of “portable trailing cable” in **Section 302(28)** and the Department’s proposed expansion of **Section 316** from covering electrical face equipment to covering all electrical equipment.

**Section 302(23):** In the definition of “machine operator” the Department proposes to change “qualified person” to “certified person,” in describing the person placed in charge of a portable or mobile face machine of any sort. Currently, even if you do not have machine runner’s papers, you are permitted to train on the equipment. This provision will eliminate that ability. The section should be revised to make it clear that trainees do not have to be certified. The term “placed in charge of” is vague. This term should be clarified now that the Department is proposing that only certified persons can be placed in charge of mobile face equipment.

**Section 302(28):** This section is not proposed to be amended, but it should be. The Department continues to define “portable trailing cable” as cable connecting mobile, portable or stationary equipment to an electric source.” The remainder of the industry defines it as “trailing cable on mobile equipment,” such as shuttle cars. Portable and stationary equipment should not be included because wear and tear on cables of portable and stationary equipment is much different than with mobile equipment.

## **Section 304 – Protection against Shock**

**Section 304(a)** is a proposed new section that would provide that all electrical equipment shall be de-energized, locked out, and suitably tagged before work is done on the equipment. This proposal would create a conflict with federal standards. There should not be different standards for dealing with electrical equipment.

There is no definition on what constitutes “work.” This provision does not discuss trouble shooting vis-à-vis electrical work. It would not allow trouble shooting with the power on. Definitions on trouble shooting and when to lockout and tag are missing. MSHA standards should be followed with regard to energized, de-energized, and locked and tagged. Taking out belt structure, guarding at tail piece, etc. may be affected by this provision.

## **Section 308 – Capacity**

**Section 308(b)** is a proposed new subsection that would provide that an electric conductor is not of sufficient size if it is smaller than is provided for in the most recent version of the National Electric Code. The problem with this proposal is that the National Electric Code is revised every few years. A change in the code will make equipment in violation of this proposed subsection. Every time the code is revised, operators would have to check all their equipment to see if it complies with the revised code. That is unnecessary and would be extremely burdensome. Finally, MSHA only incorporates existing code requirements, not future revisions.

## **Section 313 – Underground Power Supply**

**Section 313(a)** requires the ground fault indicator trip a circuit breaker. We are not aware of problems with the existing system of daily inspection by a competent person. The existing requirement allows for orderly trouble shooting and repair.

**Section 313(e)(2)** requires P numbers on the cables. As discussed above, this requirement should be deleted.

**Section 313 (g)(2):** The second sentence should be revised to make it clear that it does not apply to trailing cables.

**Section 313(j):** This subsection deals with fireproof rectifiers and transformers. The current language is not proposed to be amended, but it should be to bring it up to date. Currently, “fire proof” means that if a fire occurs internally then the fire will not propagate outside of the container. This standard was modified over time to require that the electrical components be allowed to breathe so a special pathway is designed to allow air to cool before exiting the box.

## **Section 314 – Storage Battery Equipment**

**Section 314(a)** has had varying interpretations over the years. At one time it was incorrectly interpreted to require that each battery at a charging station be ventilated. Now it is interpreted to require the charging station to be ventilated. It should be amended to make it clear that ventilation is required for the charging station, not individual batteries.

### **Section 316 – Electrical Equipment**

**Section 316(d)(3):** The Department proposes to amend this section to require that trailing cables be examined at the beginning of each shift, instead of the current requirement to examine them daily. The beginning of each shift is a vague term. MSHA allows the trailing cable to be examined within the first hour. The state requirement should be the same as MSHA.

Also, the scope of Section 316 is proposed to be expanded from covering electric face equipment to covering electric equipment, apparently anywhere in or at a mine. This expansion is not necessary. This section also applies to both mobile and stationary cables. Stationary cables are not subject to the wear and tear of cables on mobile equipment. There is no need to inspect stationary cables every shift.

**Section 316(d)(6):** The Department does not propose to revise this subsection. However, it would be in conflict with the proposed requirement that all cables be shielded. Trailing cables should not have to be shielded because there is no technology to do so.

If all cables were required to be shielded it would raise the question as to whether a nick to the shield is damage to a conductor. The Department does not permit a permanent splice underground, but MSHA does and does not count it as a splice. The state should follow the MSHA standards.

**Section 316(f):** This subsection currently provides that the person in charge of electrical face equipment shall not leave the machinery while it is running and shall cut the power off to the trailing cables before leaving the working place. The Department proposes to delete the word “face” and to change “working place” to “work area.” As proposed to be amended, this section would require that belt drives, pumps, etc. be shut off if there is no person in charge present. This could not possibly be the intended result because it is accepted standard practice for pumps and belts to run without a person physically present.

**Section 316(g):** This current provision should be deleted and the Department should accept MSHA approved explosion tested compartments. The Department has no test procedures or standards.

**Section 316(h):** This section, dealing with detection of gas, should be amended to be more specific as to what equipment shall be provided with a gas detection device. Currently gas detection devices are not required for shuttle cars, loaders, etc. It is likely that this proposed amendment will require operators to install methane detection devices on a lot more pieces of equipment than is currently required. Also, it appears that the Department intended the 1% reference in Section 316(h) to apply to all of the sub-parts of subsection (h), but it is not clear.

**Section 316(h)(2):** This is existing language that could have been improved to provide for inspection for gas to be made by qualified persons in addition to the equipment operator.

**Section 316(h)(3):** The Department proposes to amend this section to adopt the MSHA standard for 20 minute methane checks versus the current state requirement of 30 minutes. However, this provision is poorly written because it requires power to be shut off to the machine if any methane is found [not 1% methane, as provided in Section 316(h)].

**Section 316(h)(4):** This provision should be clarified to say that the person finding methane in excess of 1% must report it.

**Section 316(h)(5):** We assume that the current language of this section (which is not proposed to be changed) does not apply to electric sparking or arcs from trolley haulage, etc., but it is not clear. This section should be clarified so there is no disagreement as to its scope.

**Section 316(i):** This is a proposed new subsection that would require methane monitors to be installed on all face-cutting machines and other mechanized equipment used to extract or load coal in the mine. This proposed section should be amended to clarify that it does not apply to shuttle cars.

### **Section 317: Inspection of Equipment**

**Section 317(a):** This provision appears to have adopted the MSHA standard. The state does not have a definition for “weekly.” This definition is important. MSHA will allow you to inspect on Monday one week, and Friday the week after, and still be in compliance. In other situations, MSHA requires an inspection every seven days.

**Section 317(b):** The current language should have been changed because it still contains the wording “mechanical section,” which is not defined. The Department deleted references to “mechanical section” in other sections of the act, but not in this section.

### **Section 320 – Underground Illumination**

**Section 320(e):** This subsection deals with changing light bulbs in underground mines. The Department proposes to change it to provide that only a “qualified” person can change a light bulb. Currently, it provides that only a “competent person” can change a light bulb. Because neither “qualified” nor “competent” is defined in the current or proposed amended act, the extent and purpose of this proposed revision is not known to us. Qualified is an MSHA term, but we do not know if the Department intends to adopt the MSHA meaning. In any event, the act should not require that only a qualified or certified electrician can change a light bulb.

## **Section 321 – Telephones and Signaling**

**Section 321(b):** Currently operators can use tie wire on double insulated telephone lines. Under this proposal all telephone line must be installed on insulators. This is a violation generator where the operator uses double insulated line. Also, interestingly, the Department limits this provision to trolley entries.

**Section 321(f):** The Department has not proposed to amend this section. It should be amended because the Department has applied it to atmospheric methane monitoring and carbon monoxide monitoring systems, which are beyond the scope of the clear meaning of the section. It should be amended to make it clear that it does not apply to atmospheric methane monitoring and carbon monoxide monitoring systems.

**Section 321(g):** This section currently limits the potential for signals in an underground mine to 24 volts. This limitation of signal lights to 24 volts appears to apply to batteries. Because there are a lot of signals of greater voltage contained in permissible enclosures, this section needs to be updated.

## **Section 330 – Outdoor Substations**

The Department proposes to amend this section to require that outdoor substations be built in accordance with current Institute of Electrical and Electronics Engineers' standards and Department equipment performance specification (sic). There is no need for the Department to have the authority to develop performance specifications in addition to the Electrical and Electronics Engineers' standards. That will result in additional costs and delays. Also, there are no guidelines, standards of checks in the proposed act over Department performance standards. This proposed amendment should not be adopted.

**Section 330(6)** is proposed to be amended to reduce the maximum ground fault limit to 25 amperes from 50 amperes. In many small mines a 50 ampere current limiting resistor provides adequate protection.

## **Section 334 – Technological Improvement (Old provision)**

The Department proposes to eliminate the current provisions for obtaining variances from the requirements of the act and to replace them with a Mine Safety Board. We prefer the existing procedure over the proposed Board.

## **Section 334 – Mandatory Safety Components of Electrical Equipment**

**Section 334(a):** It appears that the Department is adopting the MSHA standards for ground wire monitoring, which currently are not state requirements. The Department should be required to also adopt the MSHA interpretations of its standards so that the state and federal standards, such as what is "fail safe," are interpreted consistently.

**Section 334(b):** The Department proposes to require ground wire monitoring for direct current machines, which is not required by MSHA. There is no legitimate reason to go beyond what is required by MSHA.

**Section 334(c):** The Department proposes that “all trailing cables and conductors for face equipment ... must be provided with a grounded metallic shield around each cable conductor.” This proposed provision could be interpreted to require shielded cable for all trailing cables. This technology does not exist. Shielded cables will not work for trailing cables. Shielded cables are not available for reeled cable systems (shuttle cars and roof bolters). This would therefore be technology forcing. It does not make sense when the target population is as small as the Pennsylvania industry. There are numerous instances of suppliers choosing not to submit equipment for various tests since the target audience is too small to justify the engineering time and expense. Recently, Motorola decided not to submit its latest handheld radio for MSHA approval. That’s a nationwide niche market that the manufacturer is willing to loose rather than take on the expense of submissions, etc.

The Department is asking for shielding around all trailing cables and conductors regardless of voltage for all equipment which would include telephones. The requirement is not just shielding of the cable, but shielding of each conductor. The Department is requiring a pilot ground wire monitoring system. This provision will require major changes and requires changes to be completed within one year. Extension cords will need to be shielded.

**Section 334(d):** This proposed section would require that plugs used on any cable in the mine must be interlocked. Because “mine” is proposed to be defined to include surface areas of underground mines, this provision would require plugs on office equipment to be interlocked. The Department proposes to require low voltage and 110 circuit plugs to be interlocked (with ground wire monitoring). This will create a real problem from a practical standpoint and it is not the industry standard.

### **Sections 336 -344 – High Voltage Longwalls**

These proposed new provisions are close to MSHA standards. We prefer that the MSHA standards be adopted, instead of adopting a state version of them. MSHA worked for years to develop their standards for High-Voltage Longwalls. There is no reason to deviate from them. Specific comments follow, but they should not be construed as accepting the Department’s proposal to adopt a state version of the MSHA standards.

**Section 336(f):** MSHA does not require look-ahead circuits, which are of little value and a major maintenance issue.

### **Section 350 – Equipment Approvals**

The Department proposes to add a new Section 350 that will give it authority to approve all underground electrical equipment, surface substations and electrical installations, fans, and

personnel conveyances connected to the underground mine. The Department proposes to expand the scope of its electrical equipment approval authority without adhering to an existing Commonwealth Court Stipulation of Settlement with the mining industry. We feel the Department is acting in bad faith, as the proposed amendments will effectively nullify the Stipulation of Settlement. Additionally, rather than expanding the dual federal/state equipment approval process that currently results in increased costs and delays, the amendments to the act should consolidate the approval process by requiring the Department to honor federal equipment approvals.

Subsection (c) of this section also provides that elevators must be installed to meet the criteria of ASME A17.1 Code, but does not tell us what version of the standard applies.

Under the proposed new section, there will not be any established standards or procedures for equipment approvals, there will be no time frame for action, and no requirements on how to handle disputes. These items were all spelled out in the Stipulation of Settlement.

#### **ARTICLE IV DIESEL-POWERED EQUIPMENT**

The Department failed to include some of the changes to the current diesel provisions agreed to by industry and the UMWA. The PCA and UMWA agreed to amendments are included in draft legislation.

##### **Section 424 – Technical Advisory Committee (TAC)**

This expands the authority of the diesel TAC into areas it has no expertise. TAC is intended to advise the Secretary on the use of diesel powered equipment. SB949 would broaden its authority to approve any new technology (not related to diesel powered equipment) not contemplated by SB949.

#### **ARTICLE V ENFORCEMENT AND REMEDIES**

This section needs to be redrafted. It is too punitive, contains no adequate conferences or appeals process, provides no factors to be considered in determining the appropriate amount of fines or civil penalties, etc. SB949 should incorporate the corresponding MSHA penalty provisions. Although the penalty is capped at \$60,000 for an infraction, there is aggressive movement on the federal level to increase that amount to \$220,000. Even that amount, less than half of what's prescribed in SB949 - \$500,000, is more reasonable.

##### **Section 515 – Permit Bar**

The proposed permit bar should not be adopted. There already are permit bar provisions in the environmental mining acts. There is no need to have a duplicate program.

**ARTICLE VI**  
**EMERGENCY MEDICAL PERSONNEL**

**Section 602 – Emergency Medical Personnel in and at Mines**

**Section 602(a)(3):** In some cases it will be difficult to meet the requirement of having paramedic services within 30 minutes of the mine.

**Section 602(b)(3):** It will be difficult to meet the requirements to have ambulance service within 10 miles of a surface mine or 3 persons with EMT on call.