

Illinois Mining Institute

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MSHA and Advances in Technology: Petitions for Modifications, Rulemaking and Experimental Permits

PRESENTED BY

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TECHNOLOGY ADVANCES

- Proximity Detection
- Electronic Surveying Instruments
- Coal Dust Explosibility Meter (CDEM)
- Personal Dust Monitors
- Communications and Tracking
- High Voltage Longwalls & Continuous Miners
- CO and Atmospheric Monitoring
- Horizontal Gas Well Plugging



METHODS OF IMPLEMENTATION

- Approval by MSHA
- Experimental Permits
- Petitions for Modification
- Rulemaking
- Policy



APPROVAL BY MSHA

- Protracted Process
- MSHA Controls



SPECIAL PERMITS TO USE

- Approval and Certification
- 30 C.F.R. § 18.82
- Face equipment
- Six months duration
- Test or “reputable testing agency”



PETITIONS FOR MODIFICATION

- Section 101(c) of the Federal Mine Safety and Health Act
 - Equal Measure of Protection
 - Diminution of Safety



PROCESS

- Submit petition to MSHA
- MSHA investigates
 - Long delays
- Hearing before Department of Labor ALJ
- Appeal to Assistant Secretary of Labor
- Appeal to US Court of Appeals



PROCESS - PROTRACTED

- 17 years Emerald Belt Air / CO Monitors



SURVEYING

- Delays in issuing Proposed Decisions
- Delays in litigation
 - Rosebud – 7 days of hearing over 15 months
 - Petitions filed
 - Hearings September 2011, August 2012, November 2012
 - ALJ Decision, April 11, 2013
 - Canyon Fuel
 - Petitions filed July 2009
 - Hearing December 2013
 - ALJ Decision 2014
 - Appealed



SURVEYING (cont.)

- For technology that has been in use for 20 years
 - Permissibility
- Cases in the pipeline
- Get more than you ask for
 - Surveying cases are example
 - Diagnostic and Testing Equipment Petitions That Were Granted Have Fewer and Less Stringent Conditions
 - Cutting and Welding Conditions
 - Gas well petitions
 - Template decisions



RULEMAKING – NOTICE AND COMMENT

- MSHA views process as cumbersome
- Even when petitions routinely granted MSHA does not normally engage in rulemaking
- Proximity Detection & personal dust monitors
- MSHA driven
 - personal dust monitors and CDEM
 - One Manufacturer
 - Took tool and applied in a fashion that it is not best suited



Is the technology ready for prime time?

- Proximity?
 - What happened to the rule?



MSHA CIRCUMVENTS RULEMAKING

- Using plans – proximity
- Policy – communication and tracking
- Refuge alternatives
 - Rule lagged behind the requirements

