

MSO Advisory Committee Meeting #4 – Sacramento

February 19, 2014

(The following is a review of the discussions transcribed from an audio recording)

Meeting called to order at approximately 9:05 AM by chairperson Steve Hart.

Division Opening Remarks:

After a brief welcome and description of the book, “47 Down”, the group heard from long-time Gas Tester/Safety Reps Larry Byrnes and Rick Roth, who described some of their underground experiences and how they feel these certified people can help improve mine safety.

John Leahy gave a brief review of what has happened in the intervening 3 weeks since the last meeting and explained that the gray sections have been agreed to. He also gave everyone his E-Mail address.

We then reviewed the various previously-discussed sections with a goal to reach concurrence on as many as possible.

Held a major discussion on training requirements for Competent Persons. The Advisory Committee felt the proposed language is too restrictive. Took proposal off the table, with hopes that different language might yield agreement.

Reached agreement on “Face or Bank – Surface Mine” and “Fire Resistant”.

Reached agreement on “Fire Resistant Hydraulic Fluids”, “Flammable Gas”, “Flammable Vapor”, and “Flash Point”...finally!

Could not reach concurrence on “Haulage Vehicle”. Also got stuck on berms on roadways owned by others—will review the MSHA handling of these matters next time.

The committee extensively discussed “Reports to the Mining and Tunneling Unit” (6960)—we need comments from the Committee to help us avoid impasse on this. Two major issues: (1) 2 vs 4 hours to report (reached concurrence on 2 hours), and (2) Can we include the Rule 342, Fatalities & Serious Injuries/Illnesses within the 2 or 4 hours (no decision as yet)? As for Item 7 (the reporting of near-misses), many think 6960(7) is too broad or should be removed completely—the vote was to remove #7 completely.

Reached concurrence on 6961, Prejob Safety Conferences and 6962, Underground Mine Classifications, which will be limited to Non-Gassy & Gassy.

6963 and 6966, Accident Prevention Program/IIPP and Safety Committee: Long discussion on these subjects, with many diverse opinions expressed. Members of the Committee, in order to avoid impasse, agreed to submit alternate regulatory language for consideration by the Committee.

6964, Code of Safe Practices, was agreed to.

6965, Safety Bulletin Boards, was also agreed to.

6967, Safety Reps and Gas Testers. Will seek concurrence at next meeting, after minor changes are made.

6968, First-Aid, CPR and AED Training. Concurrence was reached after minor changes were made.

6969, Care of the Injured. Concurrence was reached after minor changes were made.

Meeting adjourned at 4:02 PM.

Next meeting to be in Van Nuys on 3-12-14, 9 AM to 4 PM.

The Advisory Committee asked for the following

Rules for the successful litigation of the “Independent Employee Act” defense in California Appeals:

This “affirmative” defense (meaning the Employer must raise the defense) applies when an employee acts against the best safety efforts of the employer in causing a violation. The employer must prove each of the following elements by a preponderance of the evidence:

1. The employee was experienced in the job being performed;
2. The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments;
3. The employer effectively enforces the safety program;
4. The employer has a policy of sanctions against employees who violate the safety program; and
5. The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.
(Mercury Service, Inc., 77-1133, Dec. After Recon. at p. 3 (10/16/80).)