

Electronic Cigarettes

Elaine Skorich [elaine.skorich@wvago.gov]

Sent: Tuesday, November 23, 2010 4:49 PM

To: Lander, Alan A; Phillips, Cecil A; White, Eugene E; Norman, Greg J; Meadows, John J; Kinder, John L; Smith, Randy D; Snyder, Steve G; Cox, Steven L; Tucker, William A; Barry Koerber [Barry.Koerber@wvago.gov]

Gentlemen,

At the very bottom of this email is an email that I sent to MSHA asking how they plan on enforcing the new electronic cigarettes underground. Directly below this is Kevin Stricklin's email explaining that MSHA plans on prohibiting electronic cigarettes like we had planned on doing as well. Since we are all in agreement now, C.A. wants you to spread the word to your inspectors that electronic cigarettes will be treated like all other prohibited smoking materials.

Let me know if you have questions.

-Elaine

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>>> "Stricklin, Kevin G - MSHA" <Stricklin.Kevin@DOL.GOV> 11/23/2010 4:05:17 PM >>>

Dear Ms. Skorich:

Thank you for contacting MSHA on this issue as we share your concerns with the issues surrounding the use of electronic cigarettes in underground coal mines.

MSHA standard (75.1702) states "No person shall smoke, carry smoking materials, matches or lighters underground, ...". It further states "The operator shall institute a program, approved by the Secretary, to insure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters". Program Policy states "This Section is an absolute prohibition against having smoking articles underground and is directed to all persons." Furthermore, Program Policy indicates that "smoking articles" are prohibited underground. Electronic cigarettes should be considered smoking articles since

their primary purpose is to provide the same characteristics as that of a regular cigarette.

MSHA is also concerned with the heating element or atomizer, and the lithium-ion battery. Since the product is a battery operated piece of electrical equipment and is neither intrinsically safe nor permissible, it poses a hazard of igniting gases or dusts in a coal mine. Miners would easily carry these items into the face areas, returns, bleeders and gobs where potential explosion hazards are present.

We plan on working with our Districts to upgrade the Smoke/Search Program for each of our mine operators.

If you need additional information or have any questions, please contact us.

Thanks,

From: Elaine Skorich [mailto:elaine.skorich@wvago.gov]
Sent: Monday, November 22, 2010 9:27 AM
To: Stricklin, Kevin G - MSHA
Cc: Gigliotti, Stephen J. - MSHA; Thomas, Charles J - MSHA; C.A. Phillips; Eugene White; Bill Tucker
Subject: RE: Question from WV Office of Miners' Health, Safety and Training

Mr. Stricklin,

Thank you. We hope to be on the same page with this enforcement issue.

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>>> "Stricklin, Kevin G - MSHA" <Stricklin.Kevin@DOL.GOV> 11/22/2010 8:30 AM >>>

Ms. Skorich.

We have assigned your question to one of our specialists in the Safety Division. They will be contacting you in the near future.

From: Elaine Skorich [mailto:elaine.skorich@wvago.gov]
Sent: Friday, November 19, 2010 10:30 AM
To: Gigliotti, Stephen J. - MSHA; Stricklin, Kevin G - MSHA; Thomas, Charles J - MSHA
Cc: C.A. Phillips; Eugene White; Bill Tucker
Subject: Question from WV Office of Miners' Health, Safety and Training

Gentlemen,

I am an Assistant Attorney General for the State of West Virginia and represent the Office of Miners' Health, Safety and Training (WVOMHST). It is in that capacity and at the direction of Acting Director C.A. Phillips that I write to you.

WVOMHST is seeking MSHA's opinion on whether electronic cigarettes should be prohibited in underground coal mines. Recently, some of our inspectors have asked if electronic cigarettes should be prohibited pursuant to West Virginia's no-smoking materials statute. Specifically, W. Va. Code § 22A-2-57(b) states, "Open lights, smoking, and smokers' articles, including matches, are prohibited in all mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved. The operator shall at frequent intervals search, or cause to be searched, any person, including his clothing and material belongings, entering or about to enter the mine, or inside the mine, to prevent such person from taking or carrying therein any of the above-mentioned articles."

My preliminary research indicates that no smoke or combustion is involved with electronic cigarettes; however, most electronic cigarettes look identical to tobacco cigarettes, and some come with a battery charger that is the same size and shape as a pack of tobacco cigarettes. Additionally, electronic cigarettes contain a rechargeable lithium-ion battery and various other electronic circuits.

Currently, WVOMHST is enforcing W. Va. Code § 22A-2-57(b) to include electronic cigarettes as a practical matter because its inspectors do not have the time to scrutinize each potential cigarette to determine whether or not it is of the tobacco type or the electronic type. WVOMHST is still trying to determine if prohibition of electronic cigarettes will continue, and MSHA's response to this issue will assist WVOMHST with its decision. Accordingly, please have someone from MSHA contact me at your earliest convenience about this issue.

Thank you.

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<https://webmail.wv.gov/OWA/?ae=Item&t=IPM.Note&id=RgAAAAAphBhR9sXvSoMG...> 12/6/2010

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