



WEST VIRGINIA LEGISLATURE
STATE CAPITOL
CHARLESTON, WEST VIRGINIA 25305

EARL RAY TOMBLIN, PRESIDENT
STATE SENATE

ROBERT "CHUCK" CHAMBERS, SPEAKER
HOUSE OF DELEGATES

February 28, 1995



Stephen F. Webber, Director
Office of Miners' Health, Safety and Training
1615 Washington Street, East
Charleston, WV 25311-2126

Re: Promulgation of rule regarding the use of
eye protection in hazardous mining
conditions

Dear Mr. Webber:

The West Virginia House of Delegates Committee on the Judiciary has had under consideration House Bill 2480, relating to mandatory eye protection in hazardous mining conditions. After consultation with the affected interests, the committee has decided to postpone action on House Bill 2480 to allow the Board an opportunity to rectify the rule-making process undertaken in 1989 regarding 36 CSR 38, Section 4.

We request that the Board resolve the substantive and procedural issues raised by the Kanawha County Circuit Court in *West Virginia Coal Association v. West Virginia Board of Mine Health and Safety and Steven Edens*, and promulgate adequate legislative rules. We request that the Board conduct surveys or research on the number of eye injuries at mine sites. The Board should gather any available statistics on the use of eye protection and the impact this use has within the industry. Finally, we request that the Board make findings regarding these injuries, and develop comprehensive guidelines regarding the use of eye protection.

We believe, at a minimum, the rule should address the following issues:

- The circumstances and locations under which wearing eye protection should be mandatory.
- Provisions for circumstances when miners may not be required to wear glasses,

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such as lunch breaks or in nonhazardous areas.

- The ability of companies to enact more stringent guidelines than those proposed in the rule.
- Objective guidelines for enforcement of the rule, but which allow a common sense approach to that enforcement.

We recommend that the Board develop and file these rules within the time frame of the Legislative Rule-Making and Review Committee requirements, as set out in Chapter Twenty-nine-a of the *West Virginia Code*. The Board should carefully review the *Edens* decision in order to ensure compliance with the procedural and substantive issues raised in it.

It is our intention to move forward with legislation in 1996 regarding this matter if the Board fails to get adequate rules in place prior to the 1996 legislative session. Therefore, prompt consideration of these issues, and promulgation of a comprehensive rule, will prevent legislative action.

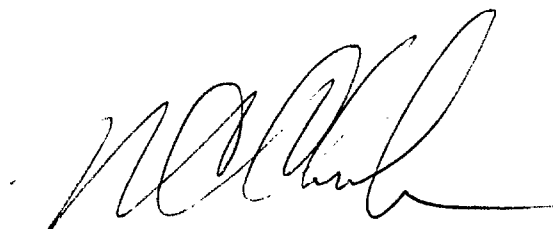
We would appreciate if you would provide us with periodic updates of your progress on this subject. Please supply us with copies of the results of your research, in addition to a copy of the promulgated rule. Finally, please copy all information and updates to the Chairs of the Committees on the Judiciary in both the House and the Senate. This information will help us decide if a legislative solution is necessary.

We appreciate your attention to these matters.

Sincerely,



Earl Ray Tomblin
President
State Senate



Robert "Chuck" Chambers
Speaker
House of Delegates

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cc: Chairman Staton
Chairman Wooton
Delegate Kuhn
Delegate Fleischauer
Delegate Kominar
Delegate Preece
Delegate Collins
Delegate Whitman
Delegate Dempsey
Members, Board of Coal Mine Health and Safety