



July 14, 2006

Terry Bentley, Chief  
Division of Coal Mine Safety  
Mine Safety and Health Administration  
1100 Wilson Boulevard, Room 2414  
Arlington, Virginia 22209-3939

Dear Terry:

On behalf of Alliance Coal, LLC (Alliance), thank you for taking the time during this very busy period for you and your colleagues to meet with members of the National Mining Association (NMA) Coal Safety Subcommittee on July 6 to discuss the plan being developed by the Mine Safety and Health Administration (MSHA) to implement the requirements contained in Section 2 of the newly enacted MINER Act. In addition to the July 7 comments of NMA, which we generally endorse, Alliance offers the following additional comments expanding on aspects of MINER Act Section 2 of particular importance to us. We hope you will find our comments helpful.

Alliance also appreciates MSHA's July 11 posting on its website of all comments received on the implementation of MINER Act Section 2. Those comments have helped inform the views we set forth below.

To begin, by way of background, we wish to comment briefly about the MINER Act in general. We then turn to MSHA's implementation of Section 2, and in particular, to the provisions dealing with "Post-Accident Breathable Air."

#### The MINER Act in General

Alliance has followed closely the Congress' examination of mine safety issues this year and its ultimate enactment of the MINER Act. As a diversified coal producer with significant underground operations in Illinois, Indiana, Kentucky, Maryland, and West Virginia, Alliance strongly supports the intent of Congress in enacting the MINER Act. Having said that, however, we are fully aware that this statute was enacted swiftly, without the issuance of committee reports by either the Senate or House of Representatives to illuminate its meaning, and with virtually no debate on the floor of the Senate or the House of Representatives. Although we fully understand the desire of the Congress to move quickly in its enactment of the MINER Act, MSHA must, because of the absence of any significant legislative

history, carefully examine the MINER Act's provisions (using the limited legislative history where possible) and interpret them in a fashion that is consistent with the meaning of the Act's plain language and in a reasonable rational manner. We say this at the outset because Alliance is fully aware of the pressures under which the Agency is operating due to the intensity of ongoing media and other scrutiny of MSHA. We note also that a number of parties were involved in providing informal advice to the Congress regarding the MINER Act. However, as MSHA implements MINER Act Section 2 and the other provisions of the statute, the only intent that counts in interpreting the MINER Act is the intent of Congress, as expressed in the legislative history. As we have noted, that intent is thinly expressed.

#### MSHA's Implementation of MINER Act Section 2

Section 2, in our view, is among the core provisions of the MINER Act. Indeed, the requirement that "each underground coal mine operator shall develop and adopt a written accident response plan . . . with respect to each mine of the operator" no later than August 14, 2006, will go far in enhancing the protection of miners which is the central goal of the Act. With that short deadline looming, Alliance fully supports MSHA's preparation of a program policy letter (PPL) to initially implement Section 2. It is our view that development of such a PPL will help in guiding operators, miners, and MSHA as the arduous task of developing written accident response plans gets underway.

Following the initial implementation, however, Alliance urges MSHA to undertake as expeditiously as possible the development of rules and regulations to implement MINER Act Section 2. In that regard, we wish to emphasize that because MINER Act Section 2 amends Section 316(b) of the Federal Mine Safety and Health Act of 1977 (the 1977 Mine Act), an interim mandatory safety standard, MSHA rulemaking activities should be undertaken pursuant to the Agency's authority under Section 101 of the 1977 Mine Act to develop improved mandatory safety standards. Moreover, that standard setting authority should be helpful in bringing MSHA's expertise to bear on the interpretation and implementation of Section 2 of the MINER Act, especially to the extent that it contains linguistic inconsistencies and anomalies.

#### Post-Accident Breathable Air

In specific regard to Section 316(b)(2)(E)(iii) of the 1977 Mine Act "Post-Accident Breathable Air," as added by the MINER Act, we urge MSHA to focus on and interpret that provision as a coherent whole, and as part of the overall requirements for a comprehensive accident response plan. On this point, Alliance wishes to emphasize that MINER Act Section 2 clearly calls for a unitary "written

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accident response *plan* . . . with respect to *each* mine of the operator.” (Emphasis added.)

With regard to “safety chambers,” Alliance strongly supports the comments of the NMA on this issue. We further refer MSHA to the plain language of MINER Act Section 13, as well as the legislative history of the MINER Act on this point. The intent of Congress to defer consideration of safety chambers until further study and analysis has been done is confirmed by the fact that MINER Act Section 13 expressly calls first for the commencement of research, including field testing concerning the “utility, practicality, survivability, and cost of various refuge alternatives” in underground coal mines. We also call MSHA’s attention to the comments of Senator John D. Rockefeller IV (D-WVA), one of the primary sponsors of the bipartisan MINER Act, that the MINER Act is “a very good bill, but I would have included more definitive language to push the introduction of emergency refuge chambers in mines. . . .” 152 Cong. Rec. S4621 (daily ed. May 16, 2006).

We agree that refuge alternatives should be further researched as to their utility practicality, survivability and cost. In addition, we believe that the locating of refuge alternatives should be studied. It is our current opinion, however, that mandating the specific location of refuge alternatives may limit their overall effectiveness. We believe that in some mines, permanent outby locations for refuge alternatives can be more effective than temporary locations near working sections. For instance, locating a refuge station in a hardened room at an SCSR cache location could prove very effective. Given that the first instinct of a miner in an emergency situation should be evacuation, an SCSR cache location is a natural rallying point for escaping miners. These locations would have the advantage of being in more permanent, well-known locations that are nearer and en route to exit portals. In addition, such locations would have the added benefit of stored breathable air in the form of SCSR caches. Each mine is different and it is important to maintain the flexibility to locate refuge alternatives in areas where they can be most effective for a particular set of mine conditions.

For purposes of implementing the post-accident breathable air requirements of MINER Act Section 2 regarding “emergency supplies of breathable air for individuals trapped underground,” therefore, Alliance strongly recommends that the starting point should be MSHA’s approval of the use of hardened rooms, safe havens, or protected transfer stations, as we discuss in Alliance’s comments of June 28, 2006 on MSHA’s emergency mine evacuation ETS (attached).

In that regard, in connection with caches of SCSRs, we have concerns that the establishment of prescriptive guidelines concerning SCSR cache locations and required number of SCSR units could have a detrimental effect on the development of SCSR technology. If PPL guidelines are written in such a way as to take SCSR

performance out of the equation, then the development of longer-lasting SCSRs will be hindered.

Much of what has been discussed in the ETS rulemaking process appears to pre-suppose that all SCSRs are “one-hour” units. There are currently available today compressed oxygen SCSR units that are capable of providing up to 110 minutes of breathable air. Although these SCSRs have proven to last up to 110 minutes in controlled tests conducted by the manufacturer and approval agencies in other countries, as well as in our own real world functional tests, the SCSRs are rated by NIOSH and MSHA as “one-hour” units due to the conventions of their classification system. Our functional tests results in actual underground conditions have proven that there can be substantial performance differences between the compressed oxygen SCSRs and the chemical oxygen SCSRs that are available today. Our tests have demonstrated that the combination of two distinctly different units, such as a 20-minute belt worn unit, and a 110-minute compressed oxygen stored unit is just as effective in the aggregate as two “one-hour” chemical oxygen SCSRs. In addition, there are two new technologies that will allow future SCSRs to outperform the chemical and compressed oxygen units that are in service today. Both hybrid SCSRs and dockable SCSRs have been identified by NIOSH and MSHA as new technologies that have promise.

There is an increased risk to an escaping miner when he or she has to change from one SCSR unit to another in irrespirable air. For this reason, longer-lasting SCSRs will significantly improve safety. Thus, we encourage you to continue the insightful aim of the ETS by structuring the PPL to be performance-oriented as it relates to the quantity of SCSRs and the location of storage caches in order to reduce the number of unnecessary SCSR change-outs, and to encourage development of enhanced SCSR technologies, as proposed by Congressman Roscoe G. Bartlett (R-MD). *See* 152 Cong. Rec. E1149 (daily ed. June 14, 2006).

Another advantage of the hardened room containing SCSR caches is the likelihood that these structures would provide an incrementally better atmosphere in which to transfer from one SCSR unit to another. Further, if these SCSR caches contained longer-lasting SCSRs, they could be spaced further apart along the escape route, thus reducing the number of required SCSR transfers. Moreover, these longer-lasting SCSRs would provide incrementally more stored breathable air at each station, which enhances the hardened room’s ability to serve as an alternative refuge station.

We believe that Congress intended for SCSR storage locations along escapeways to complement the proposed ETS. The ETS is expressly performance-oriented and permits SCSRs to be located at intervals as determined by actual mine conditions according to the actual capacity of the SCSR. Above and beyond the

ETS, Congress has now required an additional factor of safety from the deepest work area to the surface by requiring two hours of additional oxygen be located within 30 minutes from the deepest work area. The additive SCSR provisions contained in the MINER Act, along with the ETS, supply miners with a minimum of four hours of oxygen to begin their exit from the point of deepest work area. Congress has ensured that miners will have surplus oxygen available when escaping from the deepest work area, and also has recognized that the ETS provides for sufficient oxygen as miners deplete an SCSR along the escape route. It is not the intent of the MINER Act or the ETS to encourage non-essential transfer of SCSRs by escaping miners.

Alliance also wishes to comment on how much breathable air is required by Section 316(b)(2)(E)(iii)(I) of the 1977 Mine Act, as amended by the MINER Act. The answer to this question must be specific to each underground coal mine. We say this because Section 317(b)(2)(C)(iii) requires MSHA to consider, as it reviews accident response plans, that such plans must “be technologically feasible, make use of current commercially available technology, and account for the specific physical characteristics of the mine.” With this precept in mind, we call MSHA’s attention to the exchange on the floor of the House of Representatives on June 7, 2006 between Congressmen George Miller (D-CA) and Nick J. Rahall II (D-WVA). In opposing passage of the MINER Act, Congressman Miller stated:

Unfortunately, the bill . . . fails to make the reforms that go to the very heart of what happened in the Sago mine disaster . . . . It does not guarantee that miners trapped underground will have enough air to survive an accident like Sago.

\* \* \*

I want to remind Members that 11 of the 12 miners that died at Sago . . . died because they did not have an oxygen supply to last the 40 hours that they were trapped.

152 Cong. Rec. H3453 (daily ed. June 7, 2006).

In response, Congressman Rahall stated:

This bill is the best we can do today . . . . The bill does make immediate requirements for more oxygen, enough to evacuate miners in the event of an emergency and enough to maintain miners for a sustainable period of time if they are trapped underground. The act does not

designate a 48-hour supply, as [Congressman Miller] would do, because how does one honestly determine that 48 hours of oxygen is sufficient as opposed to 49 hours or 72 hours?

Indeed the Act requires each coal operator in consultation with miners and their representatives, to look at the individual mines, and . . . mines are different, and determine, subject to approval . . . by the Secretary . . . , what is an adequate amount of oxygen.

*Id.* H3454. Thus, the extent to which additional breathable air is necessary to maintain trapped miners for a sustained period of time is a determination for the *mine operator* to make, subject to MSHA approval, not for prescription by MSHA at a uniform 40-hour level which Congress rejected.

We wish to conclude by addressing several other issues of importance to Alliance. First, we urge MSHA to not preclude the use of different SCSRs at a single operation. Alliance uses both CSE and Ocenco SCSRs at its mines; and our miners are trained to and in fact know how to properly don both devices. Furthermore, we note that the longest lasting SCSR currently available is the Ocenco model EBA 6.5. The EBA 6.5 is too large to carry on a miner's belt. In order to take advantage of this best available technology, therefore, an operator must be allowed the flexibility to provide multiple types of SCSRs in a mine.

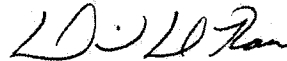
Second, Alliance does not believe it is practical or safe to store SCSRs in by the section feeder. We believe that they must be stored within 500 feet of the active working faces.

Third, with regard to post-accident communications, for most large coal mines, like Alliance's operations, an electronic tracking system could be more accurate than a human dispatcher. Alliance, therefore, encourages MSHA to allow an operator the flexibility to use either electronic tracking or a dispatcher. However, the statute does not provide for – and we do not think that MSHA is authorized to require – both. Furthermore, we encourage MSHA to allow for the implementation of electronic tracking systems that are based on practical, proven technologies, recognizing that such technologies are currently only capable of tracking miners to within designated zone locations.

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Thank you again for the opportunity to provide you with our comments. We look forward to working MSHA in our mutual implementation of the MINER Act.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Ross".

David Ross  
General Manager

Attachment

2804984



**ALLIANCE  
COAL, LLC**

June 29, 2006

Robert Stone, Acting Director  
Office of Standards, Regulations & Variances  
Mine Safety and Health Administration  
U.S. Department of Labor  
1100 Wilson Boulevard, 21st Floor  
Arlington, VA 22209-3939

Re: Comments on Emergency Mine Evacuation – Emergency Temporary Standard (“ETS”)

Dear Mr. Stone:

Alliance Coal, LLC is a diversified coal producer with significant underground operations located in Illinois, Indiana, Kentucky, Maryland and West Virginia. We presented our initial comments concerning the ETS to the Mine Safety and Health Administration (“MSHA”) at the public hearing that was held in Lexington, KY on April 26, 2006. During the public hearing, MSHA identified several issues in addition to the provisions of the ETS and requested comment on those additional issues. Alliance Coal, LLC offers the following additional comments to some of those issues raised by MSHA.

MSHA asked the following questions: “Where a mine has parallel and adjacent escapeways, under what circumstances would it be appropriate to allow a hardened room or “safe haven,” which serves both escapeways with one set of SCSRs? A hardened room is a room constructed with permanent seal techniques, submarine-type doors opening to both escapeways, and positive ventilation from the surface through a borehole. Is a safe haven an acceptable alternative? If so, what should be the minimum criteria for MSHA to accept a hardened room or safe haven?”

Where a mine has parallel and adjacent escapeways, it would be appropriate to allow a SCSR storage facility that serves both escapeways with one set of SCSRs whenever the SCSRs would be readily available to the miners in both escapeways under conditions that will facilitate emergency escape. A variety of SCSR storage configurations could satisfy this criterion, including various forms of safe havens or hardened rooms. It would be counter-productive to safety, however, to preclude any such storage facilities unless each had all of the enhanced safety features of the hardened room described in your question, including positive ventilation from the surface through a borehole. In many locations a borehole would be infeasible, yet miners should not be denied the added safety benefits a safe haven or other form of protected SCSR transfer station would offer, merely because it would not offer the additional benefit a borehole could provide.

Instead, we believe that such a storage facility should be allowed whenever that storage facility would provide an incrementally higher degree of safety for the escaping miners. For example, this incrementally higher degree of safety could be achieved by utilizing a storage facility that reduces the possibility of stored SCSR damage due to fire and/or explosions. Such a storage facility would have the ancillary benefit of protecting the atmosphere contained inside the



enclosure from immediate contamination by nearby noxious gases & smoke produced by a fire and/or explosion. This protected atmosphere has an improved probability of providing a respirable, smoke-free environment in which escaping miners could more easily transfer from one SCSR to another.

We propose a SCSR storage facility (hereafter referred to as a Protected Transfer Station, or PTS) that is constructed in a crosscut between parallel and adjacent escapeways. The PTS would utilize solid concrete-block seal construction and explosion-resistant doors to produce a hardened enclosure that protects stored SCSRs and the atmosphere contained within. The seals & doors would meet or exceed the 20-psig static pressure requirement for permanent seals set forth by 30 CFR § 75.335(a)(2). The atmosphere contained within the PTS would be monitored continuously by air-quality detectors and ventilated as needed to ensure a safe enclosed environment. The enclosure would be maintained in a sealed (doors normally closed) condition, except during appropriately scheduled ventilating procedures. The stored SCSRs would be shelved in such a way as to provide easy access and periodic examination. The PTS would contain food, water, first-aid supplies, cap-lamps, air-quality detectors, communication equipment, and such other devices deemed necessary in an emergency.

Additionally, MSHA asked the following questions: "Would a specification standard be more appropriate than the performance-oriented heart-rate method provided in this ETS? Regarding such a specification-oriented standard, what would be more appropriate: 5,000 and 2,500 foot intervals for greater than 48" height and 48" or less height, respectively, or some other specific interval?"

A specification standard would not be more appropriate because by definition it is uniform across all mines or classes of mines and mining conditions. Specification standards of this sort are inherently inaccurate, and fail to take account of numerous relevant variables. As the ETS Compliance Guide, Volume 2, at Q.26, stated in rejecting the suggestion that distances for storage locations could be based on the Program Policy Manual (PPM) chart correlating distance that can be traveled with escapeway height, such uniform specifications "do[ ] not take into account the slope of the escapeway, travel conditions, or the age of the escaping miner." The specification of a flat 5,000 foot distance for greater than 48 inches and 2500 foot for 48 inches or less would compound the deficiency of a formula specification like that of the PPM chart because at least the PPM chart was calibrated to the critical variable of mining height. Thus the use of actual performance-based testing should be the preferred alternative. For those mine operators that choose not to incur the burden of performance testing to determine the appropriate distances for SCSR storage locations in their escapeways, specification standards could be allowed as an alternative. Any specification standard should consider the actual capacity of the SCSR in order to encourage development of advanced, longer lasting SCSRs. It should be noted that while the current MSHA regulations require that miners be provided with SCSRs that protect miners for at least one hour, some SCSRs on the market provide longer protection, approaching two hours, and research is underway to develop longer lasting SCSRs. In addition, if the Agency were, for its own administrative convenience, to dictate specific distance intervals, then, at the very least, a wider range of height/distance specifications should be set. For example,

the PPM chart shows that (all other things being equal, as is the governing assumption dictated by a specification standard like 48+ inches = 5,000 feet) a miner can be expected to travel twice as far in a 70 inch high escapeway as in a 48 inch escapeway in the same amount of time. Therefore it is arbitrary to set a single specification for above and below 48 inches. In sum, if a specification approach is to be utilized instead of the more accurate performance-based approach which we recommend, then there should be a wider range of specifications -- for example, one for 30 inches, one for 48 inches, one for 60 inches and one for above 78 inches and consideration should be given to the actual capacity of the SCSR that is used.

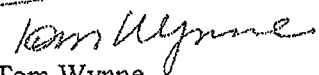
We strongly support MSHA's insightful recognition in the ETS that the location of SCSR's should be performance based. We encourage MSHA to maintain this position. We must continue to encourage the development of new mine safety technologies and not hinder advances. In its interpretation of the existing ETS, in its current rulemaking to convert the ETS into permanent mandatory standards, and in its interpretation and implementation of the new MINER Act of 2006, it is imperative that the Agency heed the words of Congressman Roscoe G. Bartlett that it must avoid:

encouraging miners in emergency situations to remove SCSRs before they are depleted and struggle to don new SCSRs in smoke-filled or other toxic atmospheres. It is not our intention [in enacting the MINER Act] to lock either the Secretary of Labor, miners, or their employers into a misguided one-size-fits-all solution. It is my intent that the Secretary would accommodate performance-based determinations of self-rescuer locations, and not discourage development and deployment of advanced self-contained self-rescuer technologies that provide greater amounts of breathable air than currently available devices, which would protect miners for longer and would require fewer changes from a depleted unit to a fresh unit in hazardous atmospheres.

152 Congressional Record E1150 (daily ed. June 14,2006) (from speech Wednesday June 7, 2006).

Thank you for your consideration of Alliance Coal, LLC's comments. If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

  
Tom Wynne  
Vice-President of Operations  
Alliance Coal, LLC