July 7, 2006

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

Dear Terry:

Thank you for taking time from your busy schedule to meet with representatives of the National Mining Association (NMA), Coal Safety Subcommittee, to discuss the Mine Safety and Health Administration's (MSHA) plan to implement the requirements contained in Section 2 of the MINER Act. We, like you, are cognizant of the time constraints imposed by the Act and appreciative of the agency's efforts to develop, in as timely a manner as possible, a Program Policy Letter (PPL) for dissemination to the industry. The PPL is, as you know, a critical guidance tool for underground coal mine operators as they develop Emergency Response and Preparedness Plans for submission to the agency.

As you are no doubt aware, NMA was actively engaged in discussions that led to the development of the Act. We supported its enactment and are committed to its implementation. The remarkable pace between introduction and enactment of the MINER Act precluded the preparation of Committee reports and other documents that normally supplement the legislation. As a result, the Act contains many undefined terms, the inclusion of broad technical concepts without explanation and the expectation that technology will be developed and become commercially available to meet the Act's objectives.

We call these facts to your attention to encourage the agency to acknowledge that successful implementation of the requirements of Section 2 of the Act will only be achieved if operators are afforded flexibility to construct plans responsive to the intent of Section 2, as well as tailored to the unique to the situations encountered at individual mines. Congress recognized this consideration in Section (2) Subsection (b)(2)(C)(iii) where it declared that plan approvals shall "account for the specific physical characteristics of the mine…" We believe the intent and spirit of the Act can best be achieved through the development of performance rather than prescriptive guidance that affords mine operators the flexibility to design plans to advance miner safety while recognizing the unique conditions encountered at the mine.

As was discussed during our meeting, we have compiled the following "Issues for Discussion" which we believe summarize the major topics upon which the agency is seeking guidance. It is our hope that you will find this useful as you and your colleagues develop the PPL. Should any questions arise or further clarification would be helpful following your review of this document, we will be available for further discussions.

Thank you again for the opportunity to comment. We look forward to working with the agency as we implement the MINER Act.

Sincerely,

Bruce Watzman

ISSUES FOR DISCUSSION

1. Section (b)(2)(A) requires mine operators to "periodically update" their R&P plans. What is a reasonable period to required updates?

As written, this section requires mine operators to prepare periodic updates for plans which are conditioned upon: "changes in operations in the mine, advances in technology, or other relevant considerations." We believe such updates should be required at intervals no more than annually unless a determination is made by the Secretary as provided for in Subsection (F) that additional plan requirements are warranted. In the absence of such a requirement we are concerned that inconsistencies in the review process across MSHA districts may result.

2. Section (b)(2)(B)(i) requires the plan to "provide for the evacuation of all individuals endangered by an emergency" while existing 75.1502 requires the development of a mine emergency and firefighting program. How should these conflicting requirements be reconciled?

This section of the Act requires the "evacuation of all individuals endangered by the emergency" while 75.1502 expands upon the evacuation requirement by identifying and exempting from the evacuation requirements those individuals required for a mine emergency response and the attendant equipment to perform such functions. This section and existing 75.1502 appear superficially to present conflicting requirements. In other words, the plan should provide for the evacuation of individuals endangered by an emergency but other individuals will not be immediately evacuated if they are tasked and trained to undertake emergency response and firefighting functions.

3. Section (b)(2)(B)(ii) requires operators to provide for the "maintenance" of trapped individuals. The Act does not provide a definition of this term. How should MSHA define "maintenance"? Should it be limited to providing the necessary materials to barricade one self or be more expansive?

We encourage the agency to recognize the 2-phased structure of the Act (Section 13). The initial phase contemplated by the Act requires implementation or augmentation of currently available technology or processes. The provisions for "maintenance of trapped miners" fall within this initial phase and, we believe, may include specifications for providing food, water, first aid supplies and other materials necessary to maintain trapped miners while awaiting rescue.

The second phase mandates development of new mine worthy mine emergency technologies. As an example, Section 13 requires NIOSH to conduct "research, including field tests, concerning the utility, practicality, survivability and cost of refuge alternatives in underground coal mines" and to report the results of this research within 18 months of enactment of the Act. The treatment of refuge

alternatives separately from measures for the "maintenance of trapped miners," demonstrates Congress' conscious refusal to mandate the speculative refuge chamber technology at this time. Rather, Congress recognized the absence of experience with refuge chambers and the controversy surrounding their utilization in underground coal mines.

Miners and safety professionals alike recognize that evacuation must remain the preferred course of action in the event of an emergency. Where evacuation cannot be accomplished, provision must be made to enhance the survivability of trapped individuals awaiting rescue. Until further study of refuse chamber alternatives by NIOSH, though, the Act correctly does not mandate their inclusion in an emergency response plan.

4. Section (b)(2)(C) requires the Secretary to consider the comments submitted by miners or their representatives when determining whether to approve a plan. The Act contains no timeframes for the submission of such comments. What is a reasonable timeframe for the submission of such comments?

While we have no comment as to the timeframe for the submission of comments by miners or their representatives, we believe the agency should make clear that enforcement actions will not be taken against operators during the plan comment and review process**.** In addition, no comment period should be provided that exceeds the response time typically provided to operators during the plan approval process. Finally, the PPL should clearly provide for service of any comments upon the operator, prior to agency action on the plan.

Moreover, we believe the agency must recognize, in any guidance forthcoming, the time delays that will occur between plan approval and implementation. For example, issue 6 concerns the installation of redundant communication means. Depending upon the final plan elements such redundant systems may require the purchase and installation of additional hardware that will not be immediately available.

As the agency looks beyond the initial August 14, 2006 filing date for the submission of the plan we believe consideration should be given to consolidation the Mine Emergency & Evacuation Plans, SCSR Storage Plans and Emergency Response plans into a single document. Harmonization of the plan submittal requirements would permit miners, mine operators and the agency to better utilize scarce resources while remaining focused on the safety priorities presented at the mine.

5. Section (b)(2)(D) – same issue as 4 above.

6. Section (b)(2)(E)(i) requires the installation of a redundant means of communication such as a secondary telephone. Should this be required in a separate and distinct entry from that where the primary telephone is located and should the line run in such entry from the section to the surface?

Redundant communication can be accomplished by variety of systems, whose selection must be determined on a mine-by-mine basis. Existing systems will satisfy the requirement of this Section, although improved communications procedures may be required of miners as well as operators. Mine design and development will dictate, to a large degree, the systems and locations chosen to provide for redundant communication.

While through-the-earth and "wireless" communications and tracking systems are being explored jointly by the agency and industry representatives, MSHA has recognized material shortcomings in these technology when tested in an underground mine environment. With the increased focus on underground mine communications, technological advancements are likely in the future. To require the adoption of this type of newer technology when it does not meet the intent of the Act is contrary to the agency's mandate. To do so will lead miners to unreasonable expectations as well as imposing undue financial hardships on many operators with no improvement in safety.

7. Section (b)(2)(E)(ii) requires operators to provide "for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any such system so utilized shall be functional, reliable and calculated to remain serviceable in a post-accident setting." Does MSHA approved technologies exist for operators to comply with this requirement, if not how will operators meet this requirement?

As the agency is well aware, today there is but one tracking system that has been approved for use in underground coal mines and while it can of provide some degree of tracking capability, it has not been proven to remain "functional, reliable and calculated to remain serviceable in a post-accident setting." As such, we encourage MSHA to recognize that compliance with this requirement will necessitate that operators modify existing communication practices to provide tracking capability beyond that which currently exists. For example, enhanced dispatcher or responsible person monitoring requirements should be recognized as a compliance method while new technology is developed and tested to permit compliance with the requirements of subsection (F)(ii).

8. Section (b)(2)(E)(iii)(I) requires "emergency supplies of air sufficient to maintain individuals for a sustained period of time." What constitutes sufficient and sustained?

While this provision is specific in that it addresses sustaining trapped individuals as opposed to the provision following that addresses provisions for breathable air for those evacuating in an emergency situation, we believe the fundamental objectives of both are nonetheless the same. In both situations, miners will, by virtue of the Emergency Temporary Standard (ETS) and the additional SCSRs required by the Act, have access to significantly increased quantities of breathable air not just in the working place, but along travelways. In both situations miners will, by virtue of the Emergency Temporary Standard (ETS), be provided at least one additional self-

contained self-rescuer in the event of an emergency and, as discussed below, we believe the requirements of this section can be met by providing miner's access to 2 units beyond those required by the ETS.

Providing adequate quantities of air to address all possible scenarios where miners might be trapped is one of the most vexing questions facing the industry. To some a sustained period of time cannot be defined while to others it is defined in terms of the amount of time it takes rescue personnel to reach trapped miners.

Just as we are grappling with this question today Congress was also at a loss to define a specific timeframe. During consideration of the MINER Act by the House of Representatives Congressman Miller (D-CA) offered an amendment which was defeated that would have required mine operators to provide 48 hours of oxygen for miners. In opposing the amendment Congress Rahall (D-WV) recognized the inherent difficulty in determining what constitutes a sufficient quantity when he argued, "… how does one determine that 48 hours of oxygen is sufficient as opposed to 49 hours or 72 hours?" He when on to state:

> Indeed, the act requires each coal operator, in consultation with the miners and their representatives, to look at the individual mines, and as the gentlemen from California knows, mines are different, and determine, subject to approval in a biennial review by the Secretary of Labor, what is an adequate amount of oxygen.

We believe the interest of miners would be well served by following the guidance provided by the Congress and using the Act to encourage the development of improved SCSRs and the plan to determine on a mine-by-mine basis the amount of breathable air required to fulfill to requirements of the Act.

9. Section (b)(2)(E)(iii)(II) requires the placement of additional self-rescuers in additional to those required in the (ETS) to be kept in escapeways from the deepest work area to the surface at a distance of no further than an average miner could walk in 30 minutes. Issues to be addressed include whether a unit in adjoining escapeways constitutes compliance as opposed to requiring two units in each escapeway. How should operators determine the distance that an average miner could walk in 30 minutes?

This section requires mine operators to provide, in addition to that required by the ETS, "catches of self-rescuers providing in the aggregate not less than 2 hours per miner … at a distance of no further than an average miner could walk in 30 minutes." It is our belief that Congress in crafting this section recognized the physical limitations that a miner encounters in an emergency situation and the varying distances throughout the industry from the working section to the surface.

Under the ETS mine operators are required to provide at least one additional SCSR in addition to the device that has traditionally been carried or stored within 25 feet

of the miner's location as well as requiring the maintenance of additional SCSRs in conjunction with personnel carriers. The Act's requirements for breathable air are additive to the ETS requirements and, in our estimation means that each miner will be provided a minimum of four SCSR's to aid in their escape in the event of an emergency. To the degree that more than 30 minutes is required to travel from the working section to the surface, additional caches, each containing one SCSR per miner would be deployed at distances that an average miner could travel in 30 minutes.

We believe the agency should recognize the potential hazards that can be introduced by requiring miners to transfer SCSRs in potentially irrespirable atmospheres. As such, we encourage the agency to revisit its previous decision not to permit operators to construct in crosscuts between adjacent entries safe havens to transfer SCSRs and that can be equipped with provisions for maintenance, if needed. We submit that such an approach is clearly permissible under the MINER act which in several places sets forth the physical characteristics of the mine as a prominent consideration in the preparation and approval of the Emergency Response Plan.

We also encourage the agency consider developing criteria for operators to use when determining "the distance that an average miner could walk in 30 minutes." We are aware that the agency is reviewing its prior methodology for determining walking distances based upon seam height and that this will not be completed prior to the August 14, 2006 deadline for the submission of the plans required by the section. It is imperative that the agency provide operators guidance on acceptable methodologies that can be used to calculate travel distances while the agency completes the review of its prior guidance.

10. Section (b)(2)(E)(iv) requires the installation of flame-resistant directional lifelines in escapeways. Should there be a requirement to standardize directional cones?

We believe that directional cone installation should be standardized such that the point should be directed inby. This approach will minimize the likelihood of miners having to remove their hand from the lifeline as they evacuate the mine.

11. Section (B)(2)(E))(v) requires the plan to "provide a training program for emergency procedures described in the plan". Is this requirement distinct from the training requirements of Part 48? How often should training be performed?

We believe the training requirements should be performance-based and structured to permit miner operators to conduct this training concurrent with that required under the ETS, if the operator so desires. Moreover, we believe the training requirement should permit operators to conduct modular training provided all training plan elements are covered during the course of the year. This will provide for more meaningful training while permitting operators the flexibility to minimize schedule disruption. In addition as comments to the ETS noted, training requirements should be associated with a month rather than a date certain to

facilitate scheduling while still complying with the intent of the training. This will provide for more meaningful training while permitting operators the flexibility to minimize schedule disruption.

12. Section (b)(2)(E)(vi) requires that the plan set out procedures for coordination between the operator and local rescue personnel. How should MSHA validate the adequacy of the coordination effort?

Validation can be accomplished through many means but it first must be established that local communities have available the means to provide surface support functions in the event of an underground emergency. Where such services do exist, mine plans can require MSHA notification in advance of coordination drills or the production of documentation to confirm that coordination measure have been developed and reviewed by the respective parties. Given the divergence of support services that exists throughout the coal regions we encourage the agency to afford mine operators flexibility to craft validation procedures reflective of the sophistication of the services available.