July 5, 2006
Mine Safety and Health Administration
Director, Office of Standards, Regulations and Variances
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939
fax (202) 693-9441

Dear Director,

Attached please find the comment of the United Mine Workers of America regarding the *Emergency Response Plan* - Request for Comments.

Should the Agency have any questions or need additional information regarding these comments please do not hesitate to contact my office at (703) 208-7120.

Sincerely,

Timothy J. Baker, Deputy Administrator

Department of Occupational Health and Safety

••••••••United Mine Workers of America
Comments on
Section 2 of the
Mine Improvement and New Emergency Response Act of 2006
for the
United States Department of Labor
Mine Safety and Health Administration's

The United Mine Workers of America (UMWA or Union) is pleased to offer comments regarding Section 2 of the Miner Improvement and New Emergency Response Act of 2006 (MINER Act). The UMWA was deeply involved, along with industry and Congressional staff members, in the development, drafting and passage of this historic legislation. Because of this involvement the Union will offer comments that will afford the Mine Safety and Health Administration (MSHA or Agency) a clearer understanding of the intent of the parties during the legislative process. We believe this insight will assist the Agency in writing an effective Program Policy Letter (PPL) and regulations that significantly improve miners' health and safety, as is the intent of the MINER Act.

In an effort to be as concise as possible we will comment on the specific parts of the MINER Act as they appear in the request by the Agency.

> "(1) IN GENERAL. – Each underground coal mine operator shall carry out on a continuing basis a program to improve accident preparedness and response at each mine.

Union Comment;

This initial statement is extremely important to the overall effectiveness of the PPL or a future rule. The Agency is charged with insuring each mine operator initiate "improved accident preparedness and response" on a "continuing basis." During the discussions the Union was concerned that the industry practice of addressing the immediate situation and ignoring the potential for future improvements would severely limit the effectiveness of the legislation. The practice of simply complying with the intent of a regulation in an effort to avoid a citation, does not drive manufacturers to invest in better technology for the future. For example, Self-Contained Self-Rescuers (SCSRs) currently used in the mining industry have not been improved since they were first required in the mines 30 years ago. The industry had satisfied the law and the regulation did not force better technology to be developed. The determination to include the "continual basis" language was to avoid that practice with this legislation.

Therefore, the Agency must include language that forces mine operators to push manufacturers to develop increasingly better devices to fulfill the requirements of the law. As current technology becomes obsolete, operators must be forced to employ new state-of-the-art devices. Only with this approach will MSHA embrace the intent of Congress when it determined first during the drafting of the Federal Mine Safety and Health Act of 1977 (Mine Act) and again with the passage of the MINER Act of 2006 that the law and regulations should

be technology driving. Further, it re-enforces Congress' belief that aggressive oversight of the industry is necessary to protect the health and safety of the Nation's miners.

Clearly the intent here is not to have a simple review of the plans the mine operator puts forward. Instead MSHA must continually consider whether the response and preparedness plan could be improved by using new technology, scientific advances or other health and safety experience. If any such improvement could be made, the operator must include them in the plan. The Agency should not approve any plan that does not fully incorporate all such advances.

> "(2) RESPONSE AND PREPAREDNESS PLAN.--
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> "(A) IN GENERAL. – Not Later that 60 days after the enactment of the Mine Improvement and New Emergency Response Act of 2006, each underground coal mine operator shall develop and adopt a written accident response plan that complies with this subsection with respect to each mine operator, and periodically update such plan to reflect changes in the operations at each mine, advances in technology or other relevant considerations. Each operator shall make the accident response plan available to miners and the miners' representative.

Union Comment;

Much of the intent of this language is reflected in our previous comment. It should be clear, however, by the detail of the requirements that technological advances in emergency and escape devices must be incorporated into the operators' plans as they become available. The Agency is responsible to be a driving force behind these advances and not allow the plans to become stale as has been the case in the past.

The MINER Act does require the mine operator to make the plans, "available to the miners and the miners' representative." This is essential for the plans to be as effective as possible. The Union was adamant that miners be given the opportunity to fully participate in the creation and submission of these plans. The Union's basis for determining the level of participation is taken from the National Bituminous Coal Wage Agreement of 2002. The relevant language states:

> The Employer shall provide an opportunity for review prior to the required submittal date and ten (10) days shall be allowed for written comments by the Mine Health and Safety Committee. Upon request of the Mine Health and Safety Committee, given within the said ten (10) day period, the Employer shall provide to the Committee one (1) copy of such plan, revision or modification.

The Union urges this language be the model for MSHA's regulation. This ten (10) day period allows miners an opportunity to review and discuss the impact of the plans on the operation as well as permit them to address with the operator their concerns and suggest improvements that may be helpful. At operations where a miners' representative is not present,

the operator should, ten (10) days prior to submittal be required to post a copy of the proposed plan on the mine bulletin board and to explain its proposed plan, with special attention to any changes from previous practice. Further, a copy of the proposed plan should be made available to any miners at the operation who make a request within the ten (10) day review period. When the operator submits its proposed plan to the Agency it must also submit any miners' comments that were received whether or not the operator adjusted its proposed plan in response to such comments. Further, all comments submitted to MSHA by miners and miners' representatives regarding the operators' plans must also be considered.

> "(B) PLAN REQUIREMENTS. – An accident response plan under subparagraph (A) shall -
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> "(i) provide for the evacuation of all individuals endangered by an emergency, and
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> "(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

Union Comment;

The operators' plan must contain two separate components: one for evacuation, and one for maintenance of those trapped underground. These are separate issues requiring different treatment. The Agency must be clear in its regulation that these require two separate sets of protections.

The Union contends that from a practical standpoint it is not appropriate to tie these issues together in a single plan. We are convinced that doing so would be less protective of miners' health and safety than what Congress intended. The Union believes that putting these issues together in a single plan would inevitably place more emphasis on addressing one of the possible situations at the expense of the other.

Every evacuation plan must afford every miner the best chance of safely reaching the surface. These plans must be specific to the mine and detailed in its procedures. Therefore it should stand alone in order to be as comprehensive and protective as possible.

The plan for maintaining those who are trapped must deal with different circumstance, training and other vital issues. It too must be comprehensive and protective. Finally, keeping the plans separate will more effectively drive new and better technology in each area.

EVACUATION PLAN – Each operator must be responsible for drafting a plan which is mine specific and offers miners the best possible chance of effectively escaping a potentially life threatening situation. The plan must detail the number and location of all SCSRs in the mine, including the unit carried by the miner. Each miner must have access to an additional SCSR in the immediate work area, but in no case should it be located outby the section feeder for miners working in active section. Outby miners including beltmen, fire bosses, construction crews,

maintenance personnel and other must be given the same degree of protection. They must have a SCSR immediately available on their person and have access to an additional unit no further away than 500 feet. This may require these miners to carry an additional SCSR to the area they are assigned to work in each day or it may require mobile storage cachets be made available.

Immediately upon entering the primary or secondary escapeway, miners should have access to a flame resistant directional lifeline. The directional cones must be standard throughout the industry, with a cone pointing towards the working face at least every 25 feet. The operator must be required to have tethering lines at this location also. Miners working in outby areas must have access to tethers at the location of their second SCSR. There must be a sufficient number or tethers for every person on the crew and a few extras to account for persons visiting the section. These tethers should be of sufficient length to permit miners to walk or crawl, if necessary, to safety without becoming entangled in the lines. The Union believes tethers that are 6 to 8 feet in length should be adequate. It is important to note that, tethers should not be part of the miners belt. Rather it should hook onto a ring placed on the belt by means of a quick coupling device. This would allow for easy application and avoid the potential of having several miners clipped to a single person.

Once the miners have located the lifeline they should be directed to the nearest surface access location, shaft, drift or emergency capsule. In all instance where miners escape will take longer than 30 minutes walking time the lifelines must direct them to a cachet of SCSRs. The cachet shall contain a sufficient number of devices to supply all individuals inby the area an additional unit. At no time will cachets of SCSRs be locate a distance greater than miner can walk in 30 minutes and all directional lifeline must intersect each cachet in the escapeway being used for escape.

In order to be most protective cachets should be located in areas sealed from the outside atmosphere, by means of airtight bulkhead seals and accessed through submarine type door. The area should be ventilated by positive pressure through a borehole from the surface and be equipped with the latest “state-of-the-art” communication equipment. Miners should be able to access additional tethers at these locations to assist miners they may encounter as the travel into outby locations.

For such plans to be effective they must be as detailed as possible and should include extensive training programs. However, none of the training associated with mine evacuation should be tied to Part 48 training. These must be a separate, stand alone exercises, that to the extent possible, reflect the actual conditions that may be encountered during an evacuation. They must take place in the underground area of the mine and include donning training units and traveling least a portion of the escapeway. The training units should, to the extent possible, reflect the actual breathing restrictions miners would encounter if they had to don a unit in an actual evacuation. Areas of the mine where peculiar or adverse conditions may impede a miners escape must be specifically included in all such training. This realistic training must be done at least every 90 days and scenarios should be changed or modified routinely, as conditions dictate.

MAINTENANCE OF INDIVIDUALS TRAPPED UNDERGROUND – Each operator must be required to submit a plan that dramatically increase the survivability of miners who are unable to escape an emergency situation. The plan must include the use of a "safety chamber"

The chamber must be explosion and fire resistant, mobile either by means of track wheels or skids and be located no further than 1,000 feet from the active working face. Additional chambers must be located a strategic locations throughout the mine to accommodate outby workers or miners who become trapped during an evacuation attempt. The chamber must contain sufficient supplies to sustain the lives of all miner who may have to access it for a period of not-less-than 5 full days. The chamber must contain:

- adequate oxygen to sustain trapped miners for 5 full days,
- first aid supplies to deal with injuries that could be sustained in an emergency,
- potable drinking water sufficient to allow 1 gallon per person per day,
- food sufficient to sustain miners in a healthy condition for 5 days,
- sanitary facilities to accommodate entrapped miners for the duration of the event,
- a separate communications line located in a separate isolated entry, or through a borehole from the surface to the chamber,
- devices to monitor the outside atmosphere at all times,
- an alarming device that indicates to mine rescue team that miners have entered the chamber,
- activities that will allow miners to avoid, to the extent possible, stress and panic, and
- other life saving or life sustaining technology that becomes available in the future.

Training on when to access the chamber and how to utilize its life saving equipment will be essential to enhancing miners' health and safety. Again this training must be separate from Part 48 training. It must be comprehensive and frequent to be successful. The Union would suggest it is done at least every 6 months and should coincide with the regular plan review by the Secretary.

Finally with regard to this matter, the Agency must drive the industry to improve technology and the require its use in the Nation's mines. The PPL and any future rules must be prescriptive in nature, demanding mine operators act pro-actively to enhance miners' health and safety on a continuous basis.

"(C) PLAN APPROVAL. – The accident response plan under subparagraph (A) shall be subject to review and approval by the Secretary. In determining whether to approve the plan the Secretary shall take into consideration all comments submitted by the miners and their representatives. Approved plans shall –

"(i) afford miners a level of safety protection at least consistent with the existing standard, including standards mandated by law and regulation;

"(ii) reflect the most recent credible scientific research;

"(iii) be technologically feasible, make use of current commercially available technology, and account for specific characteristics of the mine; and

"(iv) reflect the improvements in mine safety gained from experience under this Act and other worker safety and health laws.

Union Comment;

The Union believes participation and inclusion of rank-and-file miners in this process is key to its success. Comments submitted by miners will reflect the conditions in which they work as well as years of practical mining experience. The Secretary should give deference to the miners and their representatives when conflicts are encountered during the plan approval process. However, most of these differences can be eliminated prior to the Secretary's involvement, if miners and their representatives are given the maximum opportunity to work with the operator prior to the plans' submission, as suggested above.

The "no less protection" standard incorporated here must be strictly adhered to. The Agency must not permit the adoption of any PPL or promulgation of any regulation to undermine any section of the Mine Act or the MINER Act of 2006. The Agency must go on record stating they will not seek to undermine Congress and eliminate required mandates or permit prohibited activity, as was done with belt air, seal construction and other issues in the past.

With MSHA's encouragement, credible scientific research, by both the National Institute for Occupational Safety and Health (NIOSH) and private industry will improve and enhance current technology on a ongoing basis. The key to facilitating these improvements is to include mandates and incentives to drive these entities to pursue new technology.

Once science, technology and experience learned advances are made, the Agency has a responsibility to see that any and all of them are incorporated into the appropriate mining plan of each operator. The MINER Act of 2006 is very clear and discussion between the parties mirror that clarity: available or new technology that offers enhanced health and safety protection must be adopted for use by mine operators at the earliest opportunity.

The Agency, because of its unique access to information and systems used by operators nationwide, also has a responsibility to disseminate information on safety improvements made by operators at their individual mines. This will allow other mine operators to enhance health and safety protections for their miners too.

"(D) PLAN REVIEW.– The accident response plan under subparagraph (A) shall be reviewed periodically, but at least every 6 months, by the Secretary. In such periodic reviews, the Secretary shall consider all comments submitted by miner or miners'

representatives and intervening advances in science and technology that could be implemented to enhance miners' ability to evacuate or otherwise survive an emergency.

Union Comment;

The Union agrees that all plans must be submitted and approved within 60 days of the signing of the MINER Act of 2006. This immediate requirement will insure the protections mandated by Congress will become a reality as soon as possible. However, this review, by the Secretary, must be in depth and consider all available technology. Plans should only be approved if they contain those technologically advanced systems or devices which are ready for deployment in the industry.

The Secretary must also schedule the 6 month review of these plans in a staggered fashion. The Union believes the Agency should review some mine operators evacuation and maintenance plans beginning 3 months after the initial submission, but in no event longer than 6 months. This will avoid having all such plan due for review at the same time. The 6 month reviews will then be conducted as the become due in the future. This will allow her to do a comprehensive evaluation on each plan submitted by the operator. This will also permit the Secretary time to review new technology as it becomes available and require mine operator to place it in their mines.

In order to made these reviews as comprehensive and beneficial as possible, the Secretary should notify the mine operator and miners' representative that the plan is being reviewed. This will allow all parties to offer comments for updating and enhancing the plan.

"(E) PLAN CONTENT GENERAL REQUIREMENTS – To be approved under subparagraph (C), an accident response plan shall include the following:

"(i) POST ACCIDENT COMMUNICATIONS. – The plan shall provide for a redundant means of communications with the surface for persons underground, such as a secondary telephone or equivalent two way communications.

"(ii) POST-ACCIDENT TRACKING. – Consistent with commercially available technology and with the physical restraints, if any, the plan shall provide for above ground personnel to determine the current, or immediate pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable and calculated to remain in serviceable in a post-accident setting.

"(iii) POST-ACCIDENT BREATHABLE AIR. – The plan shall provide for –

"(I) emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time;

"(II) in addition to the 2 hours of breathable air per miner required by law under the

emergency temporary standard as of the day before the enactment of the Mine Improvement and New Emergency Response Act of 2006, cachets of Self Rescuers providing in the aggregate not less than 2 hours per miner to be kept in the escapeways from the deepest work area to the surface at a distance no further than the average miner could walk in 30 minutes;

"(III) a maintenance schedule for checking the reliability of self rescuers, retiring old self rescuers, and introducing new self rescuer technology, such as units with interchangeable air or oxygen cylinders not requiring donning to replenish air flow and units with supplies greater than 60 minutes, as they are approved by the Administration and become available on the market; and

"(IV) training for each miner in proper procedures for donning self rescuers, switching from one unit to another and ensuring proper fit.

"(iv) POST ACCIDENT LIFELINES. – The plan shall provide for the use of flame-resistant lifelines or equivalent systems in escapeways to enable evacuation. The flame resistant requirement of this clause shall apply upon the replacement of existing lifelines, or, in the case of lifelines in working sections, upon the earlier of the replacement of lifelines or 3 years after the enactment of the Mime Improvement and New Emergency Response Act of 2006.

"(v) TRAINING. – The plan shall provide a training program for emergency procedures described in the plan which will not diminish the requirements of the mandatory health and safety training currently required under section 115.

"(vi) LOCAL COORDINATION. – The plan shall set out procedures for coordination and communication between the operator, mine rescue teams and local emergency response personnel and make provisions for familiarizing local rescue personnel with surface functions that may be required in the course of mine rescue work.

Union Comment;

Advances in post accident communications is crucial to the success of any emergency plan. The Union believes that redundant communications systems are a key element in saving the lives of miners after an accident has occurred. Installation of a phone line that is completely independent of the mines primary communication system should be required in every emergency plan. This system should start on the surface and be directed to every working section or other location where miners routinely work through a separate isolated entry. The cables and other hardware for such systems should be hardened to the extent possible to protect it in the event of an accident.

This second phone system must not be permitted to limit or eliminate the requirement for wireless communications that are currently available or that becomes available in the future.

These systems, some of which have been successfully tested, must be incorporated in operators' plans immediately. The Union does not believe a system must be 100 percent reliable in order for the Agency to require its use. Rather, demanding operators install a system that increases post-accident communication 50 or 60 percent of the time will offer a much greater degree of protection than miners currently enjoy. Likewise, current technology that enable one-way digital communication can be effective in warning miners about an emergency situation and direct them to safety. These systems are currently available on the market and should be required immediately.

Post-accident tracking is currently used in many countries around the world and should be required in all mines in the United States. These devices should be capable of identifying where miners were immediately before an accident and to the extent possible post-accident information should continue to be transmitted. The Union is convinced that advances in science and technology will allow reliable wireless systems to become available to the industry. As these advances are made operators must be required to utilize theses devices. The Union also believe the use of a trained surface dispatcher will allow this information to be used to its fullest benefit.

The Union has offered extensive comments and testimony regarding post-accident breathable air. Therefore, we would suggest the Agency not only review the comments above, but also our comments submitted on the Emergency Evacuation Rule and the record of the public hearings on that matter.

The need for an effective maintenance program to insure units at the mine site are reliable is something the Union has advocated. We believe that the Agency should immediately begin a program, with the assistance of NIOSH, to randomly sample at least 3 percent of the SCSRs currently deployed in the industry. Further, the Agency should require random sampling and testing be conducted on 1 percent of the SCSRs deployed in the industry annually. These units should be given to MSHA by mine operators upon request and then handed over to NIOSH for testing. Neither agency should incur any cost for administering this program. Rather, the mine operator should bear the expense of replacing these units, as a cost of doing business.

The Union is also supportive of efforts to increase the duration a single unit will supply the user with oxygen. The next generation of SCSRs should also include units that do not require donning of additional units. They should be manufactured to allow replacement oxygen cylinders to be plugged into a donned unit. They must also supply sufficient oxygen on demand to miners evacuating the mine. Units that impede escape by not offering adequate oxygen to the miner are useless and should not be permitted in the industry. Finally, the Union has stated its opposition in the past to permitting operators to use different SCSRs at a single operation. The Union believes it is difficult enough to properly train miners on a single unit and to require training on multiple units only confuses the situation.

Training on all aspects of evacuation and maintenance of trapped miners, including donning of the SCSR and realistic evacuation exercises should be done outside of any of the

current Part 48 training.

Recent events have demonstrated the need to create plans for coordinating mine emergency and rescue efforts at every operation. Mine operators must be required to follow procedures for timely notification of all necessary personnel and effectively managing the accident site. This process must begin with the immediate notification of the appropriate regulatory agencies and necessary emergency personnel. The Union believe that notification should occur within 15 minutes of the event.

Emergency response personnel, including fire, police and emergency medical technicians should be trained by the mine operator, under the terms of an approved plan, at the mine site at least every six months. The plans should include scenario training for these individuals to insure they understand the potential problems that may exist during an actual emergency.

The operator must be required to permit the certified mine rescue teams employed for each operation the ability to train at the mine. This training must occur underground and allow rescue team members sufficient time to familiarize themself with the mine. This on-site training should occur at least once every six months.

"(F) PLAN CONTENT-SPECIFIC REQUIREMENT. –

"(i) IN GENERAL. – In addition to the content requirements contained in subparagraph (E) and subject to the considerations contained in subparagraph (C), the Secretary may make additional plan requirements with respect to any content matters.

"(ii) POST-ACCIDENT COMMUNICATION. – No later than 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006, a plan shall, to be approved, provide for post-accident communications between underground and surface personnel via a wireless two-way medium, and provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground or set forth within the plan reasons such provisions cannot be adopted. Where such plans set forth the reasons such provisions cannot be adopted, the plan shall also set forth the operator's alternative means of compliance. Such alternative shall approximate, as closely as possible, the degree of functional utility and safety protection provided by the wireless two-way medium and tracking systems referred to in this subpart.

Union Comment;

The Union believes that the scientific and technological advances in communication and tracking devices will be greatly enhanced by the passage of this legislation. And that the Agency should follow the lead of Congress and forcefully drive continued improvements. Because it is important to continually pursue better means of communications and tracking the Union would advise against the Agency taking any action on plans that limits or eliminates the use of these systems. There are currently systems being tested that can transmit wireless communication in

excess or 5,000 feet. That technology must be further enhance and encouraged. Premature approval of any plan that does not allow further advances would contradict the mandates set out in the MINER Act of 2006 and erode miners confidence in the Agency.