

Listed below are comments (in red) to Section 2 of the MINER Act. Areas of concern have been highlighted in yellow.

Mine Improvement and New Emergency Response Act of 2006

Section 2

SEC. 2. EMERGENCY RESPONSE.

Section 316 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 876) is amended--

(1) in the section heading by adding at the end the following: "AND EMERGENCY RESPONSE PLANS";

(2) by striking "Telephone" and inserting "(a) IN GENERAL.--TELEPHONE"; and

(3) by adding at the end the following:

"(b) ACCIDENT PREPAREDNESS AND RESPONSE.--

"(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.

"(2) RESPONSE AND PREPAREDNESS PLAN.--

"(A) IN GENERAL.--Not later than 60 days after the date of 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 of the operator, and periodically update such plans to reflect changes in operations in the mine, advances in technology, or other relevant considerations. Each such operator shall make the accident response plan available to the miners and the miners' representatives.
Need to define the specific period that the operator will be required to update their plan e.g. every 90 days

"(B) PLAN REQUIREMENTS.--An accident response plan under subparagraph (A) shall--

"(i) provide for the evacuation of all individuals endangered by an emergency; and

"(ii) provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine.

Need to define "maintenance of individuals" e.g food, water, barricade materials, refuge chambers, etc?

"(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 a particular plan the Secretary shall take into consideration all comments submitted by miners or their representatives. Approved plans shall--

"(i) afford miners a level of safety protection at least consistent with the existing standards, 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 the specific physical 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.

Specific criteria should be listed to provide clear guidance to the operator, miners, and MSHA staff. Criterion listed above (i-iv) are ambiguous and difficult to interpret. Additionally, need to define "accident" for the purposes of this plan. Plans of this type should have clearly defined events that trigger plan deployment. Part 50 and ETS requirements can be confusing and contradictory. Section 2 will further complicate the understanding.

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

These kinds of things are best handled on an industry-wide basis e.g notify all operators that certain components have been superseded by new available technology and that operators have "x" time to revise and resubmit their 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 communication with the surface for persons underground, such as secondary telephone or equivalent two-way communication.

Need to define the interface of this requirement with requirements already covered in 75.1600. Need to specify compliance standards with this standard e.g. what happens if a redundant system has not been provided. Need to establish points where redundant systems will be required e.g working sections? Designated outby locations? Etc.

"(ii) POST-ACCIDENT TRACKING.--Consistent with commercially available technology and with

the physical constraints, if any, of the mine, the plan shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel. Any system so utilized shall be functional, reliable, and calculated to remain 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 date of enactment of the Mine Improvement and New Emergency Response Act of 2006, caches of self-rescuers providing in

the aggregate not less than 2 hours per miner 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;

This language conflicts with language in the Emergency Temporary Standard. Consider using a variable distance matrix using seam height or other factors that affect travel time Vs ambiguous performance standards based on "average" persons and an undefined walking speed. Also certain SCSR units have been proven to provide more than 1 hour of "breathable" air, MSHA should consider allowing the operator to take credit for this additional capacity in compliance plans.

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

This language is ambiguous especially the part about new technology. This kind of change is usually handled on an industry-wide basis and not left up to the individual operator.

"Reliability" testing would require a functional e.g. destructive test of the unit.

If this language is intended to reflect something other than a destructive test, it needs to be specified.

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

SCSR mouthpiece design does not allow fit testing to ensure a "proper fit". This requirement needs to be better defined e.g. and/or eliminated. Manufacturer's manuals checked did not identify means to "ensuring a proper fit".

"(iv) POST-ACCIDENT LIFELINES.--The plan shall provide for the use of flame-resistant directional lifelines or equivalent systems in escapeways to enable evacuation. The flame-resistance 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 such lifelines or 3 years after the date of enactment of the Mine Improvement and New Emergency Response Act of 2006.

Need to define "flame-resistant". To our knowledge this requirement is not well defined by the NFPA. consistently understood standard.

"(v) TRAINING.--The plan shall provide a training program for emergency procedures described in the plan which will not diminish the requirements for 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.

"(F) PLAN CONTENT-SPECIFIC REQUIREMENTS.--

"(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 of the content matters.

"(ii) POST ACCIDENT COMMUNICATIONS.--Not 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 communication 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 the reasons such provisions can not be adopted. Where such plan sets forth the reasons such provisions can not 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 system referred to in this subpart.

This requirement should be performance based. MSHA needs to clearly define performance expectations for both systems and leave it up to the operator to use "electronic" or other means to comply. In addition, need to clarify how the "wireless two-way medium" relates to the "redundant" communications mentioned previously.

"(G) PLAN DISPUTE RESOLUTION.--

"(i) IN GENERAL.--Any dispute between the Secretary and an operator with respect to the content of the operator's plan or any refusal by the Secretary to approve such a plan shall be resolved on an expedited basis.

"(ii) DISPUTES.--In the event of a dispute or refusal described in clause (i), the Secretary shall issue a citation which shall be immediately referred to a Commission Administrative Law Judge. The Secretary and the operator shall submit all relevant material regarding the dispute to the Administrative Law Judge within 15 days of the date of the referral. The Administrative Law Judge shall render his or her decision with

respect to the plan content dispute within 15 days of the receipt of the submission.

"(iii) FURTHER APPEALS.--A party adversely affected by a decision under clause (ii) may pursue all further available appeal rights with respect to the citation involved, except that inclusion of the disputed provision in the plan will not be limited by such appeal unless such relief is requested by the operator and permitted by the Administrative Law Judge.

"(H) MAINTAINING PROTECTIONS FOR MINERS.--Notwithstanding any other provision of this

Act, nothing in this section, and no response and preparedness plan developed under this section, shall be approved if it reduces the protection afforded miners by an existing mandatory health or safety standard."

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