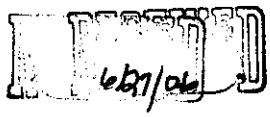
Kentucky Coal Association

Leadership for the Coal Industry



June 22, 2006

Mine Safety and Health Administration
Office of Standards, Regulations, and Variance
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

RE: Comments on March 9, 2006 Emergency Temporary Standard

Dear Sir:

The Coal Operators & Associates, Kentucky Coal Association, and the Western Kentucky Coal Association would like to take this opportunity to comment on MSHA's March 9, 2006 Emergency Temporary Standard. This alliance of coal associations represents over 90% of Kentucky's coal production. The following are specific coal industry comments. These comments are not placed in order of priority, rather in the order they were presented in the Federal Register notice.

Compliance Costs.

In the preamble to the emergency regulation, MSHA made projections on the costs of compliance with the emergency temporary standard. We feel MSHA has greatly underestimated actual costs. MSHA needs to be realistic regarding these costs. For example, in one underground mine in Kentucky, the lifelines will cost $100,000, plus $14,000 for the hangers, plus the labor to install the lifelines. This one mine will account for nearly one-fourth of the projected $0.5 million that MSHA estimated for lifeline expense.

In 2004, there were 15,522 coal miners in Kentucky. Of that figure, 10,251 were underground coal miners. A CSE rescuer costs $815. To provide each Kentucky underground coal miner with one additional SCSR would cost $8.35 million. And, yet MSHA states that "$10.5 million will be associated with additional SCSR devices." Kentucky alone will account for this amount for only one additional SCSR device per underground coal miner. It is estimated by our membership that three devices minimum will be ordered per miner here in Kentucky. MSHA's cost estimates obviously are very low.

Other expense considerations MSHA should recognize are the shelf life of the SCSRs, recalls of SCSR devices, problems with SCSR devices, the expense of constructing the caches, the expense of the signs, labor to install caches, and labor to train

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personnel. These expenses have not been recognized by MSHA in their compliance costs.

MSHA should explore incentives or financial grants for small coal operators who cannot "pass through" certain costs to their customers. Large coal companies who contract directly with coal-fired utilities (70% of Kentucky production) typically will have a contractual provision to allow the "pass through" of statutory or regulatory mandated equipment. Although, not guaranteed, these contractual "pass through" provisions will help some companies absorb this significant financial impact.

These comments are made in an attempt to force MSHA to recognize the serious financial impact its emergency standard will have on the underground coal mining industry and are not an attempt to try to equate costs with saving lives.

48.5(b)(2)(i) -- Training needs for SCSR device transfers.

COMMENT: The industry needs to receive training on the proper techniques when transferring occurs of SCSR devices manufactured by different companies. There clearly are instructions on transferring between devices belonging to the same manufacturer, but this same manufacturer will issue a disclaimer when the transfer is to a device of a different manufacturer. An example might be transferring from a CSE SCSR to an Ocenco SCSR.

48.5(b)(5) -- Need for training and rescue protocols.

COMMENT: The coal industry needs training protocols on when to barricade and when to proceed to the surface.

Although not specific to Part 48, protocols are needed on Mine Rescue Teams--- when to send teams in the mine; who sits at the command center; qualifications of the command center team, including the second shift command center team; who is in charge at the command center; and, the need for realistic training of teams (versus competition training), to name a few needs. There are no training videos for Mine Rescue Teams. The mine rescue manuals are old.

50.10 -- Immediate notification of accidents.

COMMENT: MSHA's requirement to require immediate notification of accidents recognizes that this notification can be within 15 minutes of having access to a telephone or other means of communications.

Kentucky addressed this same issue on the state level by requiring that the operator:

> "....shall within fifteen (15) minutes of having actual knowledge of the occurrence and access to the communication system as required under subsection (3) of Section 1 of this Act give notice to the department and to the representative of the miner, stating the particulars of the accident."

MSHA needs to develop language on immediate notification that recognizes that operators in many states are currently under a statutory mandate to provide immediate notice to their state mine safety agencies. MSHA should recognize this initial call as satisfying the "immediate" requirement to contact MSHA. Ideally, MSHA will work with the states in developing one central toll-free telephone number to allow a coal operator to satisfy the "immediate notification requirement" by calling a single toll-free telephone number. We urge MSHA not to create a Catch-22 by mandating an immediate notification requirement that will doom the coal operator to failure because there simply is not enough time to contact state and federal authorities in the event of an accident. While 15 minutes may seem like a long time, it certainly isn't when trying to communicate an accident report to the first agency called.

75.1502 -- Location of lifelines

COMMENT: In the April 7, 2006 Emergency Mine Evacuation Emergency Temporary Standard Compliance Guide, Volume 2, there is referenced guidelines for the use of lifelines. We support uniform guidelines for lifelines.

The following is the recently enacted Kentucky law addressing lifelines:

> "In all designated escapeways, each operator shall provide lifeline cords, with attached reflective material at not to exceed twenty-five (25) foot intervals and devices indicating the direction to the surface at not to exceed one hundred (100) foot intervals, from outby the loading point; provided, that in case of a shaft mine, such lifeline cords shall extend from outby to the loading point to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.

75.1502(c)(1) -- Emergency evacuation drills.

COMMENT: We recommend changing the intervals of conducting the mine emergency evacuation drills from "intervals of not more than 90 days" to "quarterly." This would enable the operator to comply with MSHA's intent by giving him flexibility in providing the evacuation drills. Flexibility would primarily come in the selection of training dates. There are many times when a scheduled training session has to be delayed or where a miner cannot make the scheduled training session. Flexibility in the dates for training is essential. We would further request that MSHA look to lengthening the time period between this training, from quarterly to twice-a-year.

75.1502(c)(2) -- Miners traveling the escapeway during drills.

COMMENT: We oppose any requirement to force the individual miner to walk the escapeway during emergency evacuation drills. In Kentucky where the average age of the miner is around 50 years of age, such requirement could be physically too demanding, resulting in unanticipated consequences.

The miner could ride a mantrip or mechanized vehicle during the emergency evacuation drill, stopping at key points to familiarize themselves with the locations of the SCSR caches or areas where key decisions need to be made.

75.1714-4(c) -- Storage of caches of SCSRs

COMMENT: We strongly urge MSHA to allow a single cache of SCSRs to be stored between the primary and secondary escapeways. Kentucky recently passed Senate Bill 200 which adopted numerous mine safety requirements. One of these requirements addressed this very issue. Kentucky's law provides that "all licensed premises shall maintain caches of self-contained self-rescuer devices which shall be stored in locations readily accessible to the primary and secondary escapeways."

Kentucky's law further requires:
"The caches shall be maintained in storage units capable of protecting the self-contained self rescuer from water, dust, and any other condition which will cause deterioration of the self-contained self-rescuer."

Kentucky lawmakers recognized that it is acceptable to store caches of SCSRs in areas accessible to both the primary and secondary escapeways as long as the storage areas were securely constructed to withstand explosive forces. Kentucky lawmakers recognized this "safe haven" storage as an acceptable means of satisfying the need to have SCSRs accessible to both escapeways.

When MSHA states that a fire would damage the cache, the question then becomes, "Who would be at this cache if it were this hot?" With adjacent escapeways, excessive heat would impact the "safe havens" for the caches at each escapeway.

75.1714 -- Need to recognize advances in technology

COMMENT: We strongly feel MSHA should design its final regulation so that it recognizes, or at a minimum does not prevent, advances in technologies that will provide equal or better devices to the 1-hour SCSR canisters. There should not be rigid specification for SCSRs that would hinder the development of more advanced SCSR devices or discourage the use of creative evacuation and escape plans. MSHA should push for and encourage new technologies that will promote the safe evacuation of mines following explosions, fires, and inundations.

Respectfully submitted,

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