

October 24, 2007

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Patricia W. Silvey, Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939

1219-AB56-COMM-5

**Re: Comments on Proposed Rule for Mine Rescue Team Equipment
RIN 1219-AB56**

Dear Ms. Silvey:

Kinross Gold Corporation ("Kinross"), a multinational mining company with underground mining operations in Nevada and Washington State, offers the following comments to the Mine Safety and Health Administration ("MSHA") concerning its proposed rule ("Proposed Rule") for modification of 30 C.F.R. Part 49 Mine Rescue Team Equipment. The Proposed Rule was published at 72 *Fed. Reg.* 51319, 51338 (Sept. 6, 2007).

I. THE PROPOSED RULE FAILS TO PROVIDE JUSTIFICATION FOR MSHA'S DETERMINATION THAT THE EXISTING EQUIPMENT AND MAINTENANCE REQUIREMENTS AT 30 C.F.R. § 49.6 ARE NO LONGER ADEQUATE FOR NON-GASSY UNDERGROUND METAL AND NONMETAL MINES.

The primary impetus behind the Proposed Rule is the hazards mine rescue teams face when performing rescue activities in the aftermath of a methane explosion or fire; however, as MSHA plainly recognizes, methane does not exist in explosive concentrations at the overwhelming majority of underground metal and nonmetal ("M/NM") mines.¹ In fact, only eight of the 240 underground M/NM mines that would be subject to the Proposed Rule are classified by MSHA as "gassy" mines.² Kinross believes that the Proposed Rule would subject the operators of non-gassy underground M/NM mines to unnecessary and burdensome new requirements because mine rescue teams are unlikely to encounter methane in elevated or explosive concentrations at such mines.

Before MSHA can impose new requirements on the operators of non-gassy underground M/NM mines mine operators, it must provide an adequate justification for doing so. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Such justification must be based upon actual consideration of the hazards that exist at non-gassy underground M/NM mines. *See Getty v. Fed. Sav. & Loan Ins. Comp.*, 805 F.2d 1050, 1055

¹ Methane exists in underground coal mines and certain M/NM mines that extract and process trona, salt, or petroleum. 72 *Fed. Reg.* at 51339. Underground M/NM mines that are capable of producing methane gas in explosive concentrations are commonly referred to as "gassy" mines. *Id.* Underground M/NM mines that are not capable of producing methane gas in explosive concentrations are referred to as "non-gassy" mines. *Id.*

² The Proposed Rule would apply to 653 underground coal mines, eight "gassy" underground M/NM mines, and 232 "non-gassy" underground M/NM mines. *See* 72 *Fed. Reg.* at 51339 and 51343.

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(D.C. Cir. 1986) (“Stating that a factor was considered is not a substitute to actually considering it”).

In support of the Proposed Rule, MSHA identifies several recent underground coal mine accidents, including accidents at the Willow Creek mine, the Jim Walters No. 5 mine and the Aracoma Alma No. 1 mine. *See 72 Fed. Reg.* at 51340. In each of these instances, mine rescue teams were performing rescue activities in the aftermath of a methane explosion or fire. *Id.* While the experiences of mine rescue teams at Willow Creek, Jim Walters No 5 and Aracoma Alma No. 1 may justify new equipment and maintenance requirements for underground coal mines and gassy underground M/NM mines, such experiences cannot be relied upon by MSHA as its sole basis for imposing new requirements on the operators of non-gassy underground M/NM mines. Unless and until MSHA explains why it believes the equipment and maintenance requirements at existing 30 C.F.R. § 49.6 are no longer adequate for non-gassy underground M/NM mines, MSHA should not seek to impose new requirements on such mines.

II. REGULATING ALL UNDERGROUND MINES UNDER 30 C.F.R. PART 49 WILL CREATE UNNECESSARY CONFUSION.

MSHA’s existing equipment and maintenance requirements at 30 C.F.R. § 49.6 apply equally to all underground mines, including underground coal mines, gassy underground M/NM mines, and non-gassy underground M/NM mines. In contrast, the Proposed Rule would impose one set of equipment and maintenance requirements on underground M/NM mines (30 C.F.R. § 49.6), and a different set of equipment and maintenance requirements on underground coal mines (30 C.F.R. § 49.16). *See 72 Fed. Reg.* at 51346-47. Because the hazards encountered by mine rescue teams at underground coal mines and gassy underground M/NM mines are different from the hazards that mine rescue teams encounter at non-gassy underground M/NM mines, and because MSHA is now proposing to require mine rescue equipment at different types of mines, Kinross recommends that MSHA restructure its Proposed Rule so that mine rescue teams at non-gassy underground M/NM mines are regulated under one Part (*e.g.*, Part 49), and mine rescue teams at underground coal mines and gassy underground M/NM mines are regulated under another Part. Structuring the mine rescue regulations as Kinross suggests would minimize the potential for confusion and would be consistent with MSHA’s longstanding convention of grouping regulations by mine type, *e.g.*, Parts 56 and 57.

III. COMMENTS CONCERNING SPECIFIC PROPOSED CHANGES TO 30 C.F.R. § 49.6.

Notwithstanding Kinross’ position that MSHA has not adequately justified imposing *any* new requirements on the operators of non-gassy underground M/NM mines, we offer the following comments concerning specific provisions in the Proposed Rule.

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A. ***Proposed 30 C.F.R. § 49.6(a)(1)***. MSHA's reference to "self-contained breathing apparatus" or "SCBA" in the Proposed Rule is confusing. *See 72 Fed. Reg.* at 51340. A SCBA is a breathing apparatus that is used by firefighters in surface firefighting and rescue situations. Kinross believes that MSHA should use different terminology for underground mine rescue breathing apparatus.

Kinross appreciates having the opportunity to provide input on the Proposed Rule and we sincerely hope that MSHA will give full consideration to our comments.

Respectfully,

A handwritten signature in black ink that reads "V. Jack Cottrell". The signature is written in a cursive style with a large, stylized "V" at the beginning.

V. Jack Cottrell, CSM/WSO
Manager, Corporate Health & Safety