



Sent via Electronic Mail and Hard Copy

May 30, 2006

Robert Stone, Acting Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939
comments@msha.gov

Re: Comments regarding the Emergency Mine Evacuation Emergency Temporary Standard (RIN 1219-AB46)

Dear Mr. Stone:

I. Introduction

Kinross Gold Corporation (Kinross) appreciates the opportunity to comment on the Emergency Temporary Standard (ETS) that the Mine Safety and Health Administration (MSHA) announced on March 9, 2006 in the Federal Register at FR Vol.71, No. 46, pages 12252 – 12271. Kinross is the third largest gold producer in North America. In the U.S., we operate surface and underground gold mines in Alaska, Washington, and Nevada. Kinross employs approximately U.S. 1,500 miners at these mines. We also have operations in Brazil, Chile, Russia, and Zimbabwe.

Kinross acknowledges MSHA's efforts to address safety issues that may have contributed to the problems associated with the recent Sago Coal Mining tragedy and MSHA's efforts to improve health and safety for the overall industry. However, Kinross is concerned that aspects of the ETS, which may be appropriate for coal mines or possibly other mines with certain logistics, site specific conditions, and levels of emergency preparedness, are not appropriate for all mines, including our hardrock gold mines. Our comments are thus offered from the perspective of not adding additional regulations to the entire mining community to address issues that may be site or sector specific. Rather, we recommend that any new regulatory requirements, based on the Sago Coal Mining tragedy, should be based mine sector specific needs and on a mines logistical location, site specific conditions and level of emergency preparedness.

As MSHA is aware, the mining industry is comprised of five separate sectors: Coal Mining; Metal Mining; Nonmetal Mining; Sand and Gravel; and Specialty Mining. Each of the five sectors mine different materials, each with its own set of safety issues, making the application of common, one-size-fits-all regulations very challenging. Just as the transportation industry has several unique sectors within the larger industry - shipping can not be regulated the same way as trucking, and trucking can not be regulated the same way as the airline industry - all mining sectors cannot be effectively regulated in the same manner.

In developing future regulations, including the refinement of this ETS, MSHA should emphasize the unique and diverse characteristics of each mining sector. A regulatory scheme that recognizes this diversity will allow MSHA to address the problems specific to each sector.

With this perspective in mind, please consider the following comments regarding the March 2006 ETS.

II. Comments on the ETS Notification Procedures

As noted in VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA), B. Factual Basis for Certification, most of the requirements in the ETS do not apply to metal/nonmetal mining:

“Metal/nonmetal and surface coal mines are covered in the ETS only by the immediate notification provisions. Since these provisions define and clarify existing provisions, they do not impose any costs on mine operators and contractors.” (FR Vol. 71, No. 46, page 12266.).

Kinross supports MSHA’s position that most of the provisions in the ETS are restricted to underground coal mines and are not applicable to metal/nonmetal mines. However, we have concerns that the 15-minute notification requirement does not adequately consider mining sector differences and the differences in logistics, site specific conditions and level of emergency preparedness that exist at many mines across the nation.

Kinross wishes to emphasize that we recognize the importance of timely notification of MSHA in the event of a serious accident at a mine site. Furthermore, we support the Agency’s desire to close any gaps in and provide clarification to the existing notification requirements. However, we have concerns that the notification requirement in the ETS has been written from the perspective of underground coal mines in the eastern U.S. We would like to point out the significant logistical differences between these mines and typical metal/nonmetal mines in the western U.S. and ask that MSHA consider these differences in finalizing the ETS notification requirements.

In Nevada, the field and district MSHA offices are generally hours from the mines. For example, the closest MSHA field offices to our Round Mountain Gold Mine in Nye County are located in Elko, NV and in Boulder, NV, both of which are roughly a four-hour drive from the Round Mountain Mine. The district MSHA office is located in Alameda, CA, which is at least a day’s drive away from the mine. Due to the distances involved, we cannot rely upon MSHA personnel to arrive in time to take an active initial role in rescue efforts. Rather, we have to have a self-sufficient, on-site Emergency Response Team. Typically, for remote western mines like Round Mountain, an emergency is under control by the time MSHA personnel arrive at the mine.

The situation at Round Mountain is not unique. Many western mines are in remote and isolated locations, and thus have to be self sufficient. Consequently, these mines have developed Emergency Response Plans which outline possible emergencies that the mine may face and formulate plans on how to respond if an emergency should occur. These plans include instructions for notifying MSHA and other federal, state, and local governmental authorities. If an emergency should happen, there may be city, county, state, and federal agencies that need to be notified in addition to MSHA.

In these situations, site-specific notification protocols are better because they include comprehensive notification instructions to comply with all notification requirements beyond the requirement to notify

MSHA. This site-specific approach results in better analysis and reporting of the cause of the incident, the condition of injured miners, and the remedial actions that are being undertaken.

These mines also have on-site Emergency Response Teams that receive emergency response training on a periodic basis as part of these Emergency Response Plans. These training programs provide training to both the mine rescue teams and to on-site Emergency Medical Technicians. The training plans are formulated to insure the training reflects the emergencies outlined in the Emergency Response Plans. Many companies send teams to competitions to hone their emergency response skills.

As noted, many mines have on site Emergency Response Teams due to logistics and site specific conditions. These mines are not located where they can be served from a central or regional Emergency Response Team that provide this service to many mines under a “regional” Emergency Response approach. Where a mine primarily uses a regional Emergency Response Team and MSHA has an active coordination role between the mine and the regional Emergency Response Team, a shorter notification time than currently practiced may have a benefit.

It appears to Kinross that in developing the ETS 15-minute notification requirements MSHA should consider mine logistics, site specific conditions and level of emergency preparedness along with characteristics of each mining sector. We suggest MSHA consider the following when developing immediately reporting timelines:

1. What are the consequences if a report comes in within 45 or 60 minutes instead of within 15 minutes and does the later notification result in a less proper or effective response?
2. Would a 15-minute notification requirement increase the safety of miners at most mines?

To comply with the ETS notification rule, both surface and underground metal and nonmetal mines may have to notify MSHA of an incident before the initial investigation is completed. Then, if the incident is determined not to be immediately reportable, mine operators will have to call the office back. This will cause unintentional false or misleading reporting which is not the intent of the proposed notification timeframe. Additionally, Kinross is concerned that the ETS 15-minute notification requirement has the potential to create the impression that notifying Agency personnel is more important than accessing and evaluating the accident scene, assuring miners are safe and adequately cared for, and that the response is being conducted in a proficient manner.

Because some of the accidents defined in 30 CFR § 50.2(h) are associated with incidents that may be unrelated to serious personal injuries, MSHA should consider limiting the 15-minute reporting requirements to those incidents where there has been confirmation of the loss of life or an injury that could reasonably cause death.

Therefore, Kinross requests that MSHA consider incorporating the following language into the final rule:

“After the discovery and finding that there has been a death related to mining activities or an accident causing an injury that has the seriousness and reasonable potential to cause death, the company will notify MSHA within 15 minutes of the determination.”

We note that the notification provisions in Section 5 of the recently passed Senate bill entitled the “Mine Improvement and New Emergency Response Act of 2006” are substantially similar to the language recommended above.

Kinross feels it is important to note that MSHA is not responding to a demonstrated problem in metal mines regarding notification of accidents. Like the rest of the ETS provisions, the notification requirement should similarly be restricted to the specific mining sector where a problem has occurred. In addition, Kinross suggests that MSHA not impose one-size-fits-all regulation to solve a problem specific to certain mines or a specific mining sector.

III. Conclusions

Finally, Kinross would like to emphasize the merits of a different approach than the path MSHA has taken in the ETS. We commend MSHA on the system based actions they have implemented to date, and suggest that MSHA place a greater focus on systems and processes to prevent accidents rather than the current focus on reactive measures in response to an accident. Positive safety systems that are part of the operational plan can greatly reduce the probability of incidents. Process- and system-based programs such as planned general inspections, task observation, industrial hygiene monitoring, hazard analysis and risk assessment, safety meetings, and general and specialized work rules have proven to be successful in reducing incidents on mine sites. Proper employee training and thorough testing of a system based approach ensures that employees know how to react and what to do in the event of an incident at a mining property. As described above, these systems can incorporate emergency response and notification procedures.

There is widespread recognition in the mining industry that mine safety has a direct effect on the efficiency of the mine. Safe mines have fewer accidents, less property damage, and lower costs, with higher productivity, and more miners going home safely at the end of the shift. Proactive management systems regarding training, inspections and observations have become the core principles driving safety in many mines. With continued transition to proactive safety management systems and processes, there will be a further reduction in accidents and a continuous improvement in the safety and health of miners. This change in approach would help mining companies prevent safety issues and reduce the need to respond to emergencies.

Kinross appreciates the opportunity to comment on the ETS. Please do not hesitate to contact me if you have any questions about our comments.

Sincerely

Rick Baker
Senior VP, Environmental Health & Safety