

Before the
MINE SAFETY AND HEALTH ADMINISTRATION
Arlington, VA 20554

Request for Information)
Underground Mine Rescue Equipment and Technology)

RIN 1219-AB44

**COMMENTS OF ARENT FOX PLLC REGARDING
THE POTENTIAL IMPACT OF MSHA AND CONGRESSIONAL ACTION ON
FCC COMPLIANCE FOR MANUFACTURERS AND MINING COMPANIES**

Arent Fox PLLC (“Arent Fox”) hereby submits these Comments in response to the Request for Information released by the Mine Safety and Health Administration (“MSHA”) in the above-referenced proceeding. For several years, undersigned counsel for Arent Fox has represented – before the Federal Communications Commission (“FCC”) and other agencies – some of the largest mining companies in the world as well as the Private Wireless Mining Coalition¹ on communications licensing and compliance issues, and the firm has also been actively involved in equipment authorization matters relevant to the interests of mining equipment manufacturers.

As experts in the field of mining-related communications, Arent Fox has been carefully tracking the actions that are being taken to address underground mine rescue equipment and technology by the United States Congress (i.e., pending Senate Bill 2231), MSHA, and at the state level. While such efforts are without a doubt extremely important, Arent Fox is concerned that these efforts may inadvertently result in the encouragement of legislative and/or regulatory solutions that are not in full compliance with FCC regulations, or at the very least may provide manufacturers and mining companies with insufficient guidance as to how to achieve FCC compliance while also fulfilling the goals of Congress and MSHA. It is critical

¹ See Petition for Recon., Private Wireless Mining Coalition (filed with the FCC 8/18/2003, WT Docket No. 99-87).

that any solutions comport with FCC regulations, and these regulations are not always as straightforward as many believe. In fact, it is not uncommon for even technically sophisticated companies to erroneously believe they are in compliance with the full array of FCC regulations.

Although a comprehensive discussion of these potential issues are beyond the scope of these Comments, the following are some of the issues relevant to the instant proceeding that may implicate significant FCC regulatory issues:

- Although the FCC has rules governing the use of tunnel radio systems, which can provide some flexibility for underground communications, systems seeking to operate under those rules ***still are still faced with FCC regulatory requirements***, including emissions limits and potential frequency restrictions.
- To prevent interference or other safety problems, except in very limited circumstances FCC equipment authorization and/or licensing issues must be addressed for communications systems transmitting, at least in part, above-ground. Accordingly, although certain two-way communications and tracking systems presented to MSHA for review and approval (or required for use by Congress) may provide a desired functionality, there is a material risk that a large number of such systems ***may be subject to unaddressed licensing and equipment authorization requirements***. Such FCC-related risk is only enhanced as manufacturers rush to develop and/or upgrade their technology to meet the expressed goals of MSHA and Congress. ***Both manufacturers and mining companies have FCC compliance issues in this field.***
- If MSHA and/or Congress seek expedited implementation of requirements for communications or tracking systems that may pose a problem from an FCC regulatory perspective, manufacturers or mining companies may not have sufficient lead time to either bring their systems into compliance with FCC requirements, and therefore may ***have to consider preparing and prosecuting waiver requests*** under applicable agency procedures.

In short, unless manufacturers and mining companies coordinate their response to the pending MSHA and Congressional efforts with a full understanding of applicable FCC licensing and equipment authorization requirements, the well-intentioned efforts of MSHA and Congress may eventually run into unexpected obstacles that - at a minimum - may cost industry many

millions of dollars, or - at worst - may present new safety and/or regulatory issues not currently envisioned.

Respectfully submitted,

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Dated: February 16, 2006

From: Rummel, Jeffrey [Rummel.Jeffrey@ARENTFOX.COM]
Sent: Thursday, February 16, 2006 10:50 AM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB44 - Underground Mine Rescue Equipment and Technology

Dear Sirs:

Attached please find the "Comments of Arent Fox PLLC Regarding the Potential Impact of MSHA and Congressional Action on FCC Compliance for Manufacturers and Mining Companies", in connection with the above-referenced proceeding.

For any questions regarding the FCC regulatory compliance issues raised in the attached Comments, please contact the undersigned.

Respectfully submitted,

Jeffrey Rummel, Esq.

<<Comments.pdf>>
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