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

Re: Comments of Alliance Coal, LLC on MSHA's Request  
for Information re Program Policy Letter P06-V-9:  
Section 2 of MINER Act; Emergency Response Plan,  
Post-Accident Breathable Air

Dear Ms. Silvey:

Set forth below are the comments of Alliance Coal, LLC ("Alliance") on the subject request for information ("RFI"), published in the Federal Register for August 30, 2006. 71 Fed. Reg. 51638. Alliance is a diversified coal producer with significant underground operations in Illinois, Indiana, Kentucky, Maryland, and West Virginia. Alliance has followed closely both MSHA's and Congress' examination of mine safety issues this year following several tragic coal mine accidents. Since the summer, we have been engaged in a regular dialogue with MSHA on regulatory issues resulting from these actions, as evidenced by our June 29, 2006 comments on MSHA's Emergency Mine Evacuation Emergency Temporary Standard ("ETS"), our July 14, 2006 letter on MINER Act Section 2, and our August 18, 2006 letter on MSHA's Program Policy Letter No. P06-V-09 (the "PPL") on implementation of MINER Act Section 2. All of those letters are incorporated by reference herein as though fully set forth. As a member of the National Mining Association ("NMA"), Alliance has also participated fully in all of the meetings held between MSHA and NMA's Coal Mine Safety Subcommittee on the ETS and MINER Act implementation. In this regard, Alliance endorses the comments of the NMA on the RFI.

As our starting point in providing the Agency with our comments on the RFI, we wish to reaffirm that Alliance strongly supports the intent of Congress in enacting the MINER Act. We fully understand the expressed need of Congress to swiftly pass the new law. However we wish to urge MSHA again that, because of the absence of any significant legislative history (since no Senate or House of

Representative's Committee Reports were issued to illuminate the MINER Act's meaning nor was there any significant debate of the MINER Act on the floor of the Senate or the House of Representatives) it is incumbent upon MSHA to carefully examine the MINER Act's provisions (using the limited legislative history where possible) and interpret in a fashion that is reasonable, rational, and consistent with the meaning of the MINER Act's plain language. It is against this touchstone that the RFI must be considered.

**THE POST-ACCIDENT BREATHABLE AIR REQUIREMENTS OF THE MINER ACT MUST BE TREATED AS A COHESIVE WHOLE**

Thus, in specific regard to Section 316(b)(2)(E)(iii) of the Federal Mine Safety and Health Act of 1977, "Post-Accident Breathable Air," as added by MINER Act Section 2, Alliance again urges MSHA to focus on and interpret that provision as a coherent whole, and as part of the overall requirements in MINER Act Section 2 for a comprehensive, unitary emergency response plan. More particularly, the requirement for "emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time" must be read in concert and as part of the requirement for additional "caches of self-rescuers." Those provisions must also be reconciled so as to always encourage miners to escape from the mine in an emergency, but at the same time provide them with the means to survive if they are unable to do so. Thus, MSHA should not interpret the post-accident breathable air provisions of the MINER Act in a way that will cause any confusion over the most fundamental precept of survival in mine emergencies, i.e., that miners should strive to promptly evacuate the mine and only consider barricading themselves as a last resort.

Alliance, therefore, wishes to reemphasize that the starting point for implementing the requirement for emergency supplies of breathable air for miners trapped underground should be MSHA's approval of the use of hardened rooms, safe havens, or protected transfer stations, as we discussed fully in our previously mentioned June 29, 2006 comments on MSHA's ETS and our July 14, 2006 letter on MINER Act Section 2. In addition, the fact that currently available self-contained, self-rescuers ("SCSRs") are capable of providing up to 110 minutes of breathable air when used for escape and up to eight hours at rest (even though rated by MSHA and NIOSH as "one-hour" units) must be factored into the equation for determining the amount of breathable air sufficient to maintain trapped miners for a sustained period of time. These SCSRs should be included as part of the emergency supply of breathable air for trapped miners at their full factory rating, and should not be constrained by the artificial conventions of NIOSH's and MSHA's classification systems. Alliance also wishes to note that we understand that funding for fast-track development of improved dockable SCSRs has been initiated by NIOSH, and

that there is reason to expect such devices will be commercially available within two years. In the longer term, development of hybrid SCSRs (a combination of an SCSR and filter self-rescuer ("FSR")) is anticipated. These SCSRs, when available, offer the potential to be instrumental in meeting the requirements of the MINER Act for breathable air for miners trapped underground.

### HOW MUCH BREATHABLE AIR IS REQUIRED?

As for the question of how much breathable air is sufficient to maintain miners trapped underground for a sustained period of time, in this instance the legislative history of the MINER Act is helpful. Thus, we call MSHA's attention again to the exchange on the floor of the House of Representatives on June 7, 2006 between Congressman George Miller (D-CA) and Nick J. Rahall II (D-WVA). In opposing passage of the MINER Act because he did not believe it to be stringent enough, Congressman Miller stated:

Unfortunately, the bill . . . fails to make the reforms that go to the very heart of what happened in the Sago Mine disaster. . . . It does not guarantee that miners trapped underground will have enough air to survive an accident like Sago.

\* \* \*

I want to remind Members that 11 of the 12 miners that died at Sago . . . died because they did not have an oxygen supply to last the 40 hours that they were trapped.

152 Cong. Rec. H3453 (daily ed. June 7, 2006).

In response, Congressman Rahall stated:

This bill is the best we can do today. . . . The bill does make immediate requirements for more oxygen, *enough to evacuate miners in the event of an emergency and enough to maintain miners for a sustainable period of time if they are trapped underground*. The act does *not designate a 48-hour supply*, as [Congressman Miller] would do, because how does one honestly determine that 48 hours of oxygen is sufficient as opposed to 49 hours or 72 hours?

Indeed the Act requires each coal operator in consultation with miners and their representatives, to look at the individual mines, and . . . mines are different, and determine, subject to approval . . . by the Secretary . . . , what is an adequate amount of oxygen.

*Id.* H3454. (Emphasis added.)

Not only did Congressman Rahall view the breathable air requirements as a cohesive whole, but also what this legislative history teaches is that the additional breathable air necessary to maintain trapped miners for a sustained period of time is a mine-specific determination for the mine operator to make, subject to MSHA approval. It is not for prescription by MSHA at a uniform 40-hour level advocated by Congressman Miller and rejected by Congress. In addition, it is also not for prescription by MSHA at the 48-hour level currently being considered by the State of West Virginia's task force created to address the breathable air issue.

We also note that the West Virginia task force is examining many of the same issues that MSHA has identified in the RFI. However, MSHA should not march in lockstep with whatever recommendations are ultimately made by that task force. We say this because MSHA's actions in connection with post-accident breathable air are governed by the MINER Act (not the West Virginia legislation under which the state task force is operating). In this respect, Alliance is very pleased to see that MSHA has highlighted that the MINER Act requires that all emergency response plans ("ERPs"), including their provisions for post-accident breathable air must be measured against the four criteria of Section 316(b)(2)(C) of the 1977 Mine Act, as added by MINER Act Section 2. *See* 71 Fed. Reg. 51639. Alliance does take issue, however, with MSHA's statement that it "will take those factors into consideration." *Id.* The Agency must do more than simply take these criteria "into consideration," because Mine Act Section 316(b)(2)(C) clearly *mandates* their application to MSHA's review of ERPs.

#### WHAT IS THE BEST WAY TO PROVIDE BREATHABLE AIR?

MSHA has asked for comments on the question of the best way to provide post-accident breathable air sufficient to maintain trapped miners for a sustained period of time. In addition to supporting the comments of NMA about this question, we wish to emphasize the critical need for MSHA to ensure that the Agency's answers to this question are safe, especially in the aftermath of a mine explosion or mine fire. Simply put, MSHA should not require the installation of oxygen sources underground which could inadvertently cause or contribute to a fire or explosion. Oxygen must be packaged in highly pressurized containers to provide an amount sufficient enough to serve any useful purpose. The storage of these pressured

cylinders in underground coal mines would increase the hazards that exist in a post-accident situation. If a cylinder valve is damaged, it could shear and the escaping pressure could propel the cylinder like a rocket, releasing pure oxygen into an already hazardous environment. Although oxygen does not burn, it does fuel the combustion process. In oxygen-rich atmospheres, materials become easier to ignite as their flammable ranges expand and their auto-ignition temperatures are lowered. Oxygen generating candles are also not appropriate for use in underground coal mines. The exothermic chemical reaction that occurs upon activation of a candle produces enough heat to ignite methane concentrations that could exist in a post-accident atmosphere. MSHA should exercise care to ensure that it does not require operators to purchase equipment or technologies not yet proven to be effective. Underground coal mines cannot be used as laboratories for the trial-and-error implementation of potentially unachievable "pie-in-the-sky" aspirational ideas, much less for experimenting with untested ideas that may actually jeopardize the safety of miners underground.

#### EMERGENCY SHELTERS

MINER Act Section 13 requires NIOSH to "conduct research, including field tests, concerning the utility, practicality, survivability and cost of various refuge alternatives in an underground coal mine environment. . . ." NIOSH must then submit a Report on the results of this research to the Secretary of Labor, the Secretary of Health and Human Resources, and the committees of jurisdiction in the Senate and House of Representatives by December 15, 2007. In turn, the Secretary of Labor then must, by June 15, 2008, respond to the Congressional committees of jurisdiction, describing any actions the Secretary intends to take based upon NIOSH's report, and the reasons for such actions, including proposing regulatory changes.

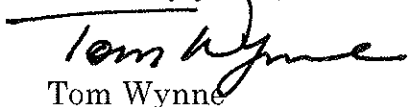
Thus Alliance believes that until NIOSH completes its Section 13 Report (no later than December 15, 2007), and until MSHA responds to that report (no later than June 15, 2008) and takes whatever regulatory action it may ultimately determine, the Agency cannot *mandate* the use of emergency shelters for ERPs under MINER Act Section 2. Operators may choose to use such shelters if such use is suitable for any given mine. On this point, however, we note that the aforementioned West Virginia task force is wrestling with the question of the efficacy of commercially available emergency shelters for underground coal mine use. Once again, therefore, Alliance urges MSHA to allow the use of hardened rooms, safe havens, or protected transfer stations as part of the "tool box" for supplying breathable air for miners trapped underground. At the very least, MSHA should acknowledge that the use of such facilities is a solid step along the way in the development of more technologically advanced emergency shelters.

THE NEED FOR NOTICE AND COMMENT RULEMAKING

As we have previously stated, the short deadline imposed by Congress for implementation of MINER Act Section 2 justifies use of the PPL to guide operators, miners, and MSHA in the preparation and approval of ERPs. Alliance wishes to reemphasize and urge MSHA again to move as quickly as possible to develop rules and regulations for the purpose of implementing Section 2. In that regard, we remind the Agency that because MINER Act Section 2 amends Section 316(b) of the 1977 Mine Act, which is classified as an interim mandatory safety standard pursuant to Section 301(a) of the 1977 Mine Act, MSHA should now turn to the development of improved mandatory safety standards pursuant to its authority under 1977 Mine Act Section 101, for the purpose of further implementing and interpreting MINER Act Section 2 through notice-and-comment rulemaking. That standard setting authority will enable MSHA to bring its expertise, and the expertise of mine operators and miners, to bear on the interpretation and implementation of Section 2. Especially to the extent that Section 2 contains internal inconsistencies and anomalies, as well as arbitrary or unreasonable requirements that may frustrate the achievement of the MINER Act's purposes, as a result of its hasty enactment, MSHA's authority to develop improved standards will allow the development of harmonized, performance-oriented requirements that are consistent with the MINER Act's intent.

We appreciate the opportunity to provide you with these comments. Alliance is committed to working with MSHA to develop the performance oriented solutions to the problems posed by implementation of the MINER Act.

Sincerely yours,



Tom Wynne  
Vice-President of Operations  
Alliance Coal, LLC