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Mine Safety and Health Administration
Office of Standards, Variance, and Regulations
1100 Wilson Boulevard
Room 2350
Arlington, VA 22209-3939

Re: Request for Information: Post-Accident Breathable Air

Dear Sir or Madam:

The National Mining Association (NMA) submits these comments in response to the Request for information (RFI) issued by the Mine Safety and Health Administration (MSHA) on August 30, 2006 (71 FR 51638). We appreciate the opportunity to comment on this important regulatory initiative. We recognize that this proceeding arises from Section 2 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 which requires, among other things, that operators provide "emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time."

As the agency is well aware, the swift enactment of the MINER Act was unprecedented. The 30 days between introduction and enactment precluded the preparation of accompanying legislative history documents which often serve as guidance for both regulators and the regulated community to discern Congressional intent. The absence of such guidance has made even more daunting the task of addressing and reconciling the related emergency air requirements of section 2 of the MINER Act in a manner that will improve mine safety and enhance miner survivability in the event of an emergency.

Rather than address each question individually we have prepared the attached Summary of Points that we believe responds to the underlying intent and direction of the RFI. We do not believe that the "breathable air" requirements of the Act can be viewed in isolation. Rather, these requirements must be viewed in the context of a systematic risk-based analysis of the conditions present at each operation. Only in this manner can factors such as mine size, seam height, geology and engineering, to name a few, be fully evaluated when determining the quantity, location, delivery system of breathable air best suited to meet the needs of the miners at a particular location.

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Summary of Points

I. It is the responsibility of each company to provide adequate training and provisions for miners to evacuate the mine in the event of an emergency.

II. The MINER Act may be read by some as presenting conflicting goals in that Section 2 requires mine operators to now provide emergency supplies of breathable air for a "sustained period of time," (apparently supplementing those supplies of breathable air provided for via the Self-Contained Self-Rescuer (SCSR) requirements of Section 2), which may by necessity include reliance on a refuge alternative at some point. However, Section 13 requires National Institute for Occupational Safety and Health (NIOSH) to "conduct research, including field tests, concerning the utility, practicality, survivability and cost of various refuge alternatives in an underground coal mine environment...." The absence of guidance regarding the interplay between the two requirements addressing breathable air raises a number of serious issues for the National Mining Association's members

The most important consideration from the perspective of ensuring miners' health and safety – the purpose of the MINE Act and MINER Act -- is an inherent tension in Section 2 of the MINER Act which details the goal of providing enough breathable air for safe evacuation and providing emergency air sufficient to maintain trapped miners for a sustained period of time. Great care must be taken to ensure that Mine Safety and Health Administration (MSHA) does not interpret the MINER Act (and does not require Emergency Response Plans (ERPs)) so as to cause confusion over the keystone principle of survival in mine emergencies, i.e, that miners should promptly evacuate and consider barricading in whatever form only as a last resort. The potential for confusion is acute at this time with the rapid influx of new miners into the industry.

The crux of the problem under consideration hinges upon the mechanisms for storage and delivery of breathable air. In West Virginia, a task force specifically created to address the breathable air conundrum concluded that a prefabricated shelter concept with a shared breathable air source may be the only potentially viable near term solution for active and, thus, mobile mining sections. The W. Va. task force continues to evaluate these shelter types, but has yet to approve one as suitable. The task force has already recognized the development of improved, portable, rechargeable units for the individual SCSRs as a more efficient way to ensure the delivery of breathable air.

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 take, MSHA cannot and should not mandate the use of emergency shelters for ERPs under MINER Act Section 2. Rather, the agency should use the coming months pending release of the NIOSH findings to encourage the aggressive development and approval of SCSRs that are portable, rechargeable, designed to eliminate reliance on a mouthpiece.

III. The industry believes that decisions regarding the location of and provisioning for supplies, including breathable air sufficient to sustain trapped miners, must be predicated upon a risk-based, site-specific analysis of the conditions presented at each mine . This is particularly necessary given the wide range of mine sizes and seam heights, as well as the multitude of geologic and engineering conditions present throughout the underground coal industry.

IV. The industry believes that, based upon a risk-based site-specific analysis conducted in III above, a pre-designated assembly and staging area can be established at an appropriate distance near the section for miners to meet in the event of an emergency. This location should be equipped with barricade kits containing emergency supplies and equipment, as well as an additional source of breathable air beyond those SCSR's provided for on the section, which would take into consideration the anticipated number of miners working on the section, increased by a safety factor. Further, based upon the results of the risk analysis, it may be appropriate to provide up to 48 hours per miner of breathable air that can be accessed at that point or as miners evacuate the assembly area. However, a one-size-fits-all 48 hour requirement for all underground coal mines is inappropriate. The agency's regulations should establish minimum requirements, not a uniform requirement applicable to all situations.

V. Any final rule should be performance based and encourage the adoption of new and potentially unique methods and/or technology to afford miners enhanced protection by empowering an operator's ability to utilize the technology without encumbrance. Although operators may choose to use one of the wide-variety of proposed shelter concepts if such use is consistent with the risk-based site-specific analysis conducted in III above, alternatives should not be foreclosed.

We look forward to continuing to work with the agency and other stakeholders as we develop solutions to the difficult challenges we face to advance mine safety and health.

Sincerely,

Bruce H. Watzman

Attachment