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General Manager - Safety

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Patricia W. Silvey, Acting Director
Office of Standards, Regulations, and Variances
U.S. Department of Labor
Mine Safety and Health Administration (MSHA)
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

Re: PROGRAM POLICY LETTER PO6-V-9: SECTION 2 OF MINER ACT; EMERGENCY RESPONSE
PLAN, POST-ACCIDENT BREATHABLE AIR

Dear Ms. Silvey:

CONSOL Energy Inc.¹ appreciates this opportunity to respond to Mine Safety and Health Administration (MSHA) Program Policy Letter P06-V-9 soliciting comments to be used by MSHA in developing guidance regarding the breathable air provisions of the MINER Act. These provisions address the evacuation of individuals endangered by an underground mine emergency and also the availability of readily accessible breathable air to maintain miners trapped underground over a sustained period of time. CONSOL Energy recognizes the MINER Act was prompted by the high level concern for miner safety coming out of the tragic events in the mining industry earlier this year and supports the underlying goals of the MINER Act. CONSOL Energy comments as follows:

- 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 provide emergency supplies breathable air for a "sustained period of time," apparently separate from those supplies of breathable air provided for *via* the Self-Contained Self-Rescuer (SCSR) requirements of Section 2. In addition, to the extent that breathable air supplies for a sustained period may be tied to a refuge device, there is an apparent conflict with the Section 13 requirement that the National Institute for Occupational Safety and Health (NIOSH) "conduct research, including field tests, concerning the utility, practicality, survivability and cost of various refuge alternatives in an underground coal mine

¹ CONSOL Energy Inc. is a multi-energy producer of coal, gas and electricity. CONSOL Energy currently has 17 mining complexes located in the United States in Virginia, Pennsylvania, West Virginia, Kentucky and Utah.

environment....” The absence of guidance regarding the interplay between the two Section 2 provisions addressing breathable air, as well as with the Section 13 provisions, raises a number of serious issues for the underground mining industry.

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 also requires emergency air sufficient to maintain trapped miners for a sustained period of time. Great care must be taken to ensure that MSHA does not interpret the MINER Act (and the Emergency Response Plan (ERP) provisions) 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 inexperienced 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 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 but, importantly, will not provide protection from a secondary explosion. The W. Va. task force continues to evaluate these shelter types, along with other refuge alternatives, but none has yet been approved as suitable. This research highlights the fact that the development of improved, portable, rechargeable units for the individual miner is a more efficient way to ensure the delivery of breathable air without the need to rely upon a refuge chamber with its inherent problems, *e.g.*, carbon dioxide and heat build-up, claustrophobia.

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 individual breathing devices that are portable, rechargeable, and designed to eliminate reliance on the sustained use of mouthpiece and to permit the ready consumption of liquids and nourishment. Unfortunately, the legislative and regulatory rush to increase the amount of breathable air stored underground presents a significant obstacle to the development of improved SCSR technology. The resultant large numbers of recent new SCSR purchases, as well as pending orders, will remain serviceable for many years, thus, diminishing the market demand for new improved breathable air technology.

III. The specification of a one-size-fits-all quantity of breathable air for all underground coal mines is inappropriate and unnecessary. The decisions regarding the location of and provisions for supplies, including breathable air, sufficient to sustain trapped miners should logically be predicated upon a risk-based, site-specific analysis of the conditions presented at each mine, including the location, amount and form of breathable air supplies already established by the Emergency Temporary Standard (Emergency Mine Evacuation). This approach 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. 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. If consistent with the risk-based site-specific analysis recommended in Section III above, such customized alternatives should not be hindered or foreclosed.

Should any questions arise regarding these comments, or further clarification would be helpful, following your review of this document, I will be available for further discussion.

Thank you again for the opportunity to comment. We look forward to working with the agency as we implement the MINER Act.

Respectfully submitted,

Elizabeth S. Chamberlin