



October 28, 2019

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
201 12th Street South
Suite 4E401
Arlington, Virginia 22202-5452

(Submitted electronically at <http://www.regulations.gov>)

RE: Comments of the National Lime Association on: Escapeways and Refuges in Underground Metal and Nonmetal Mines (Docket No. MSHA-2018-0015)

The National Lime Association (NLA) appreciates the opportunity to provide comments on MSHA's notice referenced above. The notice seeks comments on MSHA's Program Policy Letter No. P18-IV, on Escapeways and Refuges (30 CFR 57.11050).

NLA is the trade association for manufacturers of high calcium quicklime, dolomitic quicklime, and hydrated lime, collectively referred to as "lime." Lime is a chemical without substitute, providing cost-effective solutions to many of society's environmental problems. Lime is produced by calcining limestone, and thus most lime manufacturers also quarry limestone, with mining operations under the jurisdiction of MSHA. NLA's members operate both surface and underground mines.

NLA commends MSHA for addressing issues of safe escape and refuge in underground mines, and further commends MSHA for seeking comments on its PPL. NLA and its members have some concerns with the PPL as currently worded, as explained below.

The PPL addresses 30 CFR 57.11050(a). That section reads:

Every mine shall have two or more separate, properly maintained escapeways to the surface from the lowest levels which are so positioned that damage to one shall not lessen the effectiveness of the others. A method of refuge shall be provided while a second opening to the surface is being developed. A second escapeway is recommended, but not required, during the exploration or development of an ore body.

In the PPL, MSHA states its position that this section requires a method of refuge be provided both when a second opening to the surface is being developed AND during the exploration or development of an ore body. NLA notes that this interpretation is not clearly mandated by the language of the rule. However, this interpretation is not new, also appearing in MSHA's Program

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Information Bulletin (PIB) No. P09-09 (<https://arlweb.msha.gov/regs/complian/PIB/2009/pib09-09.asp>).

What is new, and problematic, however, is language in the PPL suggesting that “in most cases a refuge located, for example, 1500 feet from miners on a relatively level surface (or, for example, reachable within a 10-minute walk in any configuration while carrying an injured miner) would generally be close enough to provide the protection the standard intends.” This language appears to contradict other language in the regulations, as well as MSHA’s previously stated interpretation.

30 CFR 57.11050(b) states:

In addition to separate escapeways, a method of refuge shall be provided for every employee who cannot reach the surface from his working place through at least two separate escapeways within a time limit of one hour when using the normal exit method. These refuges must be positioned so that the employee can reach one of them within 30 minutes from the time he leaves his workplace.

In the 2009 PIB cited above, MSHA made clear that the 30-minute period in 11050(b) applied both to refuges placed because escapeway travel times could exceed an hour AND to situations where a refuge was required on 11050(a). The PIB states:

Miners working in any mine area which is not provided two separate escapeways must be provided a refuge area they can access within thirty minutes using normal means of travel.

See also <https://arlweb.msha.gov/MNMResources/Escapeways.pdf>.

This interpretation has been in place for over 10 years, and operators and inspectors have relied upon it to determine proper placement of refuges. Furthermore, it is logical: if an escapeway that requires an hour to traverse is acceptable, then access to a refuge within half of that time should also be acceptable.

While MSHA may have intended the 10-minute language in the PPL to be merely an example of what could be protective, it is certain to create confusion and a potential for inconsistent enforcement of the standard. While NLA does not object to consideration of site-specific factors in determining whether a refuge is properly placed, the example of an appropriate location should be based on the clear language of the rules, which refers to accessibility within 30 minutes using normal means of travel.¹

NLA strongly urges MSHA to revise the PPL to either delete the example discussed above, to revise it to conform with the 30-minute language in the applicable rule, or, at the very least, to make it clear that the language in the example is intended to serve only as a suggested good practice, and that inspectors should not issue citations for refuge placements that are within the limits of the regulation but not those of the example.

¹ A recent Executive Order makes it clear that “Guidance documents may not be used to impose new standards of conduct on persons outside the executive branch except as expressly authorized by law or as expressly incorporated into a contract.” [Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication](#), Section 3, Oct. 9, 2019.

NLA appreciates the public hearing MSHA held on this topic, but suggests that the agency hold further meetings with stakeholders to determine whether additional guidance is needed for refuge placement. It is important to note that metal and nonmetal mines vary greatly in their configurations, and are often very different from coal mines. These differences should be considered and factored into any more detailed guidance on refuge placement. NLA would be very happy to participate in discussions on this important topic.

NLA appreciates the opportunity to comment on these important issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hunter L. Prillaman". The signature is stylized with a large initial "H" and a long, sweeping underline.

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Document: MSHA-2018-0015-0007

Comment from Hunter Prillaman, National Lime Association

Submitter Information

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General Comment

Attached are the comments of the National Lime Association.

Attachments

NLA Comments on MSHA refuge policy Oct 28 2019