January 8, 2009

Ms. Patricia Silvey
U.S. Department of Labor - Office of Standards
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington, VA 22309-3939

Dear Ms. Silvey:

Attached are the comments of the United Mine Workers of America on the Program Policy Letter for Wireless Communications and Electronic Tracking Systems Guidance.

The UMWA appreciates the opportunity to participate in this important rulemaking and asks that you forward our comments to the appropriate person(s) for consideration.

Sincerely,

Dennis O'Dell, Administrator
UMWA Department of Occupational
Health and Safety

COMM-3

Comments of the United Mine Workers of America
On the Program Policy Letter for
Wireless Communications and Electronic Tracking Systems Guidance

The Union would like to offer comments on the Mine Safety and Health Administration's Program Policy Letter (PPL) Published in the December 18, 2008 Federal Register (Volume 73, Number 244) [Page 77069-77072], Subject: Wireless Communications and Electronic Tracking System Guidance. First and foremost we want to emphasize that MSHA needs to enforce what Congress's intent was for the use of electronic tracking and two-way communication systems.

The language in the United States Public Laws 109th Congress-Second Session Convening January 7, 2005 PL 109-236 (S 2803) June 15,2006 is written very clearly. There is to be An Act to amend the Federal Mine Safety and Health Act of 1977 to improve the safety of mines and mining. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, to pass the **MINE IMPROVEMENT AND NEW EMERGENCY RESPONSE ACT OF 2006 (MINER Act). Under the MINER ACT, SEC. 2 EMERGENCY RESPONSE "(2)** (B) PLAN REQUIREMENTS.--- states "An accident response plan under subparagraph (A) shall--- "(i) provide for the evacuation of all individuals endangered by an emergency; and provide for the maintenance of individuals trapped underground in the event that miners are not able to evacuate the mine." "(C) PLAN APPROVAL spells out these plans are subject to review by the "**Secretary"** in determining whether to approve a particular plan. The Secretary then has to take into consideration all comments submitted by miners or their representatives.

The reason the UMWA believes that this language needs to be pointed out is because the UMWA played a large role in working with members of Congress and Senate to craft the current language that was adopted in the MINER Act. Our organization testified at the many hearings held before members of the Congress and Senate after the disasters that took the lives of miners at Sago, Aracoma and the Darby mines. The UMWA also met at length with members of Congress in 1) drafting and deciding what items needed to be addressed in the MINER Act and 2) how the new safety regulations should be applied.

When looking at the language, it is very clear that the MINER ACT was written to protect all miners. The language of the Program Policy Letter under section entitled Communication Systems **2. Coverage Area** specifies requirements for only certain areas of coverage, and does not include all areas of the mine where miners may be located. **B.i.** gives discretion to the District Manager to approve alternative coverage areas. Providing such discretion to the District Manager is neither advisable, nor would it meet the statutory requirement. For example, each mine could have different areas of the mine that will be covered. Congress intended that all miners in all areas of the mine will be provided with a form of communications for emergencies. **B.ii.** would permit operators

to do nothing more than use a check-in check-out system to track miners. This is nothing more than the current system in use today to track whether a miner is underground. How does this offer better protection? This does not carry out the intent of the MINER Act nor does it comply with the language of the MINE Act, SEC. 2 (C) "(i), (ii), (iii) and (iv). Technology is available today that can track and allow communications to miners in all areas of the coal mine. Such use should be required.

The Union would also like to point out that these protections were put in place for the protection of miners and not mining equipment or supplies. Under the MINER Act SEC 2"(E) "(ii) Post Accident Tracking shall provide for above ground personnel to determine the current, or immediately pre-accident, location of all underground personnel and MINER Act SEC 2 "(F) PLAN CONTENT-SPECIFIC REQUIREMENTS.--- states that operators are to provide for an electronic tracking system permitting surface personnel to determine the location of any persons trapped underground. Notice that the language in each portion of the law references **PERSONS** and/or **PERSONNEL.** Currently MSHA allows operators to have tracking systems in place for use of locating and tracking empty supply cars and mining equipment. However, by tracking equipment, operators may confuse things for people. The MINER Act is concerned with protecting human lives. Looking at past disasters we have learned that during the initial time when the responsible person on the surface has become aware of a problem, quick decisions need to be made. Because the slightest delays of decision-making could cost lives, we don't need the responsible person on the surface trying to determine what is a person and what is an empty supply car or mining equipment. Allowing tracking of equipment introduces confusion that may hamper rescue in an emergency; accordingly, tracking equipment cannot be tolerated in an Emergency Response Plan.

The MINER Act consistently talks about persons and/or personnel. When the widows of the miners who were killed at Sago, Aracoma, and Darby testified before Congress, and Congress heard a cry for change, it was for the miners' protection, not to track mining equipment. If MSHA doesn't correct this problem immediately, a miner's life could be lost because the responsible party mistook an empty supply car for a miner or visa versa because of human failure or a system failure. If MSHA insists that these tracking systems be for miners and miners only, you will have eliminated a possible glitch of confusion that may cost lives. The proof is in history; reread the Sago and Jim Walters#5 report and interviews of what transpired at the communication center during that disaster. The intended purpose of these tracking systems is to determine the location of persons underground in the event of an emergency. They should not be used for other purposes such as locating equipment, or if a particular worker that may be needed elsewhere in the mine. When these systems become integrated into the daily activities at the mine, the chance for confusion with their intended purpose for mine emergencies becomes greater. The tracking system should exclusively be used for location of persons in the event of an emergency. This is the clear intent of the MINER ACT.

Communication Systems

The Union would also like to offer comments on the PPL Communication Systems, 1. General Considerations-An alternative to fully wireless communication system used to meet the requirements of the MINER Act.

Communication Systems 1.a. states "the untethered device should be readily accessible to each group of miners working or traveling together or to any individual miner working or traveling alone." The Union would ask the Agency to please define readily accessible. If there is no clear definition for readily accessible we see too much potential for abuse. A defined distance must be used to make sure there is no confusion as to how far away the communication can be located to insure that such an untethered device is available to all miners in the event of an emergency. Communication Systems 1.b. states " provide communication in the form of two way voice and/or two way text messages." Insofar as both technologies exist, the use of both should be required. What if a miner cannot talk and his only means is to text; or what if a miner has burnt or broken hands and he can only talk and not text. We have currently available systems that are capable of both functions, therefore both functions should be required.

Communication Systems 4. Standby power for Underground Components and Devices- b. states "portable devices, such as hand held radios should provide sufficient power to facilitate evacuation and rescue following an accident," MSHA should set further protections in place by requiring operators to have extra batteries at various locations underground such as charging stations in the event miners need them. We all know that batteries can and will fail for numerous reasons and this provision would be a great improvement that would be of little cost and requires very little planning on the operator but could prove to be vital in a rescue attempt. Federal Regulations for rescue chambers require 96 hours post accident, it makes no sense that MSHA only requires 24 hours here. By MSHA requiring only 24 hours, we will fail to improve our rescue attempt abilities such as the ones we have recently been involved in at Quecreek, Sago, and Crandall Canyon. There are systems available today that provides 48 hours of continuous operation of all system infrastructure and all portable appliances. These systems have been approved and are proven to be economical technology and needs to be required.

The requirements of Communication Systems **7. Maintenance**, MSHA should require as part of each ERP that all miners employed at the mine be trained for each shift to carry out this task. It has been proven time after time that no one is as familiar with the mine as the miner that works there. Not only would this insure that affected miners would be able to be efficient in performing these tasks, but also if the system goes down, someone would be available immediately to correct the problem.

Electronic Tracking

The language of the MINER Act specifically spells out under SEC 2. (E) (ii) POST-ACCIDENT TRACKING---the operators will provide a plan which will include "an electronic tracking system permitting surface personnel to determine the location of any trapped persons underground". There are systems that have been approved by MSHA that can perform this task so therefore, the Agency should not approve ERPs that do not adopt the approved technology. All plans should provide this protection. It should further be emphasized in these plan approvals that these systems are to be used to track persons and nothing more. Where MSHA refers to a "coverage area" it should be understood that a coverage area is the entire mine, not exempting any areas where miners may work or travel, this means escapeways in addition to the normal working areas.

Under Electronic tracking section **2**. Performance **a. ii.** 2000 feet distance allowed in escapeways is too large an area. These systems have the capability to track in distances much closer and should be required. No more than a 200 feet distance should be required in all areas of the mine. There are MSHA approved systems available today that can and do meet this accuracy, and in some cases better than 200 feet. This has been shown to be successful in mines that utilize these systems as we have seen during the experimental stages. MSHA also needs to be reminded that $10 million taxpayers dollars was allocated to develop technology capable of a +/- 50 feet system that will reach **all areas** of the underground mine. To put it into plain language, the Union insists that the recommendations as we have outlined in our comments, must be adopted. If these were put into place when Sago occurred, those men would have still been alive today. With the criteria as outlined by MSHA's PPL without the changes in our comments, these men still die, as well as others may.

Under Electronic tracking section **7**. Surface Considerations, **a**. refers to "the communication facility". MSHA should make sure these facilities are located at each individual mine surface manned by an employee at that operation.

Under Electronic tracking section **9.** Maintenance, MSHA should further insist that miners employed at the mine be trained for each shift to carry out this task. It has been proven time after time that no one is as familiar with the mine as the miner that works there. Not only does this serve as being able to be efficient in performing these tasks, but also if the system goes down, someone would be available immediately to correct the problem.

The Union would further recommends that before any plan is submitted to MSHA for review and approval, the operator must give its proposal to the Representative of miners at least 10 days prior to the operator making his submittal to MSHA. Only by doing so will MSHA have a chance to receive and consider the miners' comments as Congress required. After such period and the District Manager has had a chance to

review the plan and consider all comments, the District Manager should meet with the operator and the Representative of the miners at the mine site to discuss the plan. After this meeting has taken place and all comments have been shared with all parties involved, the District Manager should then send the plan to MSHA headquarters to the office of the Assistant Secretary for review and where final approval will be granted.

While a so called fully wireless system may not yet be available, the alternative must be the best available at the present time. It is our understanding that systems are available which provide electronic tracking and communications of greater distances than required by this Program Policy Letter. The Union believes that the best system available should be required, now and on an ongoing basis. As technology improves, the improvements should be made available to miners. The Agency should provide a list of all available approved systems with specifications of their capabilities. Further, as improved systems become available, a list should be provided to the industry of those new systems, citing the improvements.

Under this Program Policy Letter, the District Manager is granted almost absolute authority for approval of these systems and the areas of the mine to be covered. In some instances if the District Manager determines that communication cannot be established in certain areas, a check-in/ check-out system would be deemed acceptable. The Union understands that the District Manager will ultimately approve the system for each mine much like the approval of a mine plan; however, care must be taken to insure that the best system available is used each and every time and that every area of the mine is covered. The MINER Act directed that mine operators provide a location system and a means of communication with any miners who may be trapped in an emergency. The intent was that these protections be standard and consistent throughout the coal industry. As the policy letter provides case-by-case approval by the District Manager, every mine may have a different system with varying areas of the mine covered. If such alternatives are approved until a completely wireless system is developed, safeguards must be in place to guarantee that all involved persons have a clear understanding as to the operation of the system in place and the areas being covered. When the technology is not available, the training must go above and beyond to make up for the technological shortcomings. This would include education of the miners, mine mangers and mine rescue personnel who would be involved with any rescue operation at this mine. The miners must fully understand the system available to them in case of an emergency and clearly understand how to use it. Those persons monitoring the system must understand how to locate miners and procedures to follow should an emergency arise. Further, mine rescue personnel who respond to the emergency must fully understand the system when they arrive at the mine site. As part of their regular periodic on site training, mine rescue teams must be trained on communication and tracking so they will be ready to act when they arrive in an emergency. The intent of the MINER Act was to guarantee a system for locating and communicating with trapped miners and to make sure mine rescuers can quickly locate and act to rescue them in the event of an emergency. We never again want to see a reoccurrence of the tragedy at Sago where miners tried in vane to signal non-existent rescuers using ancient means of pounding on the mine roof. The intent of

Congress with passage of the MINER Act was to make sure such a situation never again happens.

Dennis O'Dell
Administrator of Occupational Health and Safety
United Mine Workers of America