



Received 5/22/06
MSHA/OSRV

Industrial Minerals Association – North America

May 22, 2006

Office of Standards, Regulations
and Variances
Mine Safety and Health Administration
U.S. Department of Labor
Room 2350
1100 Wilson Boulevard
Arlington, VA 22209-3939

Re: Emergency Mine Evacuation
RIN 1219-AB46

Dear Sir or Madam:

The Industrial Minerals Association – North America is a trade association representing producers and processors of industrial minerals, as well as equipment manufacturers, railroad and trucking companies, media companies, law firms and consulting professionals that serve the industrial minerals industry. IMA-NA's membership currently includes companies that mine and/or process ball clay, bentonite, borates, feldspar, industrial sand, mica, soda ash, sodium silicate, talc, wollastonite and other minerals. These minerals are the industrial feed stocks for the manufacturing and agricultural industries, providing the raw materials for such essential products as glass, ceramics, paints, plastics, metal castings and fertilizer. All IMA-NA Producer Member companies operating in the United States are impacted by the Mine Safety and Health Administration's emergency temporary standard on emergency mine evacuation issued on March 9, 2006, specifically the provisions of 30 C.F.R. § 50.10 addressing notification of MSHA within 15-minutes by mine operators when an accident occurs.

It is not reasonable to require notification to MSHA within 15 minutes of accidents occurring in all instances, since it could distract mine personnel from actions needed to save lives. This requirement is impractical and potentially dangerous. We readily submit that reasonable and timely notification to MSHA is necessary, and the role MSHA plays in emergency response is of vital importance to the protection of miners. However, it is possible to envision a number of circumstances in which meeting the requirements of this 15-minute rule will not be possible and will increase the risk of death or serious injury to individual miners. For example, in the case of a small mine where all mine personnel are engaged in emergency response activities, the demand that such responders should stop their activities to make a phone call to MSHA is a distraction from the primary role of these responders to save lives. The first few minutes of any emergency are filled with a number of activities. The one thing all these activities have in common is the potential to

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make a direct and immediate impact on health and safety, and to possibly directly intervene in the chain of events that leads to serious injury and loss of life. A phone call to MSHA personnel, who will be unable to arrive during the first few minutes of an event, does not fall into the category of an activity that could have such a direct and immediate impact. Adding an activity that is outside of the scope of this requirement is counterproductive and ignores the major premise of the Federal Mine Safety and Health Act of 1977. The Act states that “the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource--the miner”.

The professionals in the mining industry are well trained in actions to take during an emergency. Stringent requirements such as the 15-minute rule do not give credence to the professionalism of these individuals (the very individuals who are relied upon to save lives). Failure to give credence to these professionals is not consistent with the Incident Command System (ICS). The ICS is the accepted ‘gold-standard’ of emergency response. Emergency response personnel should be trained to make decisions using professional judgment, and not be burdened with a set of rules that removes these vital components. Acknowledgment of the importance of professional judgment and flexibility has been voiced by the Department of Labor in its own description of the virtues of the ICS. (<http://www.osha.gov/SLTC/etools/ics/index.html>):

“The modular organization of the ICS allows responders to scale their efforts and apply the parts of the ICS structure that best meet the demands of the incident. In other words, **there are no hard and fast rules** for when or how to expand the ICS organization.”

“A major advantage of the ICS organization is the ability to **fill only those parts of the organization that are required.**”

“The roles of the ICS participants will also vary depending on the incident and may even vary during the same incident.”

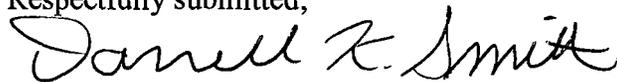
“The number of personnel and the organization structure are dependent on the size and complexity of the incident. **There is no absolute standard to follow.**”

The 15-minute rule violates a basic principle of occupational safety and health that states protective measures should not cause greater harm than the hazard such measures are intended to eliminate. The Occupational Safety and Health Administration (OSHA) Respiratory Protection standard, for example, states that “appropriate retrieval equipment for removing the employee(s) who enter(s) these hazardous atmospheres” should only be used “where retrieval equipment would contribute to the rescue of the employee(s) and **would not increase the overall risk** resulting from entry”. Similar requirements state that personal protective equipment should never be used when the hazard the equipment creates is greater than the hazard which the equipment is designed to abate. This is a fundamental tenant of occupational safety and health, and it is a standard question on the American Board of Industrial Hygiene certification examination.

If the 15-minute rule is to remain a requirement, the following language should be considered. *Mine operators must immediately notify MSHA within 15-minutes after determining that an accident has occurred, unless efforts to make such notification increase the risk of death or serious injury to miners.* This language will ensure that 15-minute notification is received in the majority of cases, but it also gives credence to the professional judgment of trained emergency response personnel and ensures that a rigid requirement such as this is not the cause of death or serious injury.

In summary, the 15-minute rule could increase the risk of death or serious injury to miners, violates the intent of the Federal Mine Safety Act and the Incident Command System, fails to give credence to the professional judgment of mine professionals, and violates basic principles of occupational safety and health.

Respectfully submitted,

A handwritten signature in black ink that reads "Darrell K. Smith". The signature is written in a cursive style with a large, prominent "D" and "S".

Darrell K. Smith, CIH, MPH
Vice President, Government & Environmental Affairs