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Sent via Fax and Hard Copy

June 21, 2006

Robert Stone, Acting Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2350
Arlington, Virginia 22209-3939
comments@msha.gov

RE: Comments regarding the Emergency Mine Evacuation Emergency Temporary Standard (RIN 1219-AB46)

Dear Mr. Stone:

Cumberland Resources Corporation appreciates the opportunity to comment on the Emergency Temporary Standard (ETS) for Emergency Mine Evacuation. In addition to the attached comments, I strongly recommend that MSHA rectify the conflicts and inconsistencies between the Emergency Temporary Standards (ETS) for Emergency Mine Evacuation and the requirements of the Mine Improvement and New Emergency Response Act of 2006 ('MINER Act of 2006') which was recently passed by Congress and signed in law by President George W. Bush on June 15, 2006.

The object of all involved (miners, companies, enforcement agencies, and lawmakers) should be legislation and regulations that provide a safe working environment in today's mines and not action taken without thorough investigation and input from all involved parties.

Your consideration of these comments is appreciated.

Sincerely,


Harry Dean Childress
Government Affairs Agent

AB46-COMM-26

Comments: The Mine Safety and Health Administration

RIN 1219-AB46

The Emergency Temporary Standard (ETS) was developed and published on March 9, barely two months after the two January, 2006 accidents in West Virginia occurred. At that time, both investigations had not been completed and thereby no findings or conclusions had been developed and/or released. The ETS was developed with no input from miners or mine operators.

MSHA stated "The current lack of available supplemental SCSRs, the lack of training in deploying a supplemental SCSR in irrespirable mine atmospheres, and the lack of lifelines in both required underground coal mine escapeways present a grave danger to miners when a fire, explosion, or other mine emergency occurs." Many of these items have been previously addressed by MSHA but were not put in place, but suddenly there is a "grave danger" and an Emergency Temporary Standard is developed with little research into the availability of additional SCSRs or the practical application, cost and results of such ETS. The previous two uses of the ETS were to order "hands-on" training for miners in the use of SCSR devices (52 FR 24373, June 30, 1989), and to order certain training on mine evacuation procedures for underground mines (67 FR 76658, December 12, 2002). Neither of these usages of the ETS resulted in the expenditures of capital and man hours required by RIN 1219-AB46.

Current manufacturers of SCSR devices were quoting a 120 to 180 day delivery time for SCSR, prior to the development of this ETS. As a result of the requirements for the

purchase of additional numbers of SCSR that delivery time would increase to several months if not a year or more. Some states are requiring even more SCSR devices to be purchased per man, thereby, further increasing the shortage and lengthening the delivery time. Who decides the order in which the SCSRs are provided and delivered? What about new mines going into development or production? Where do they stand in the delivery schedule?

Thousands if not tens of thousands of additional SCSRs will be required to be purchased for providing a second SCSR for each person underground and for the required storage locations. The final regulations could have been proposed, proceeded through the regulatory process, and become final before the required SCSRs are delivered to all operations. While waiting, mines will be operating the same as they would have been had the normal process been followed. This would have provided for input and discussion by all stakeholders to provide the most workable regulation. Currently, the decisions and directions of one party is all that is considered in the process.

MSHA's stated cost estimates are grossly under-estimated based on the number needed and the current SCSR price. The requirements for lifelines in escapeways, the sign requirements, and the personnel cost for plan changes and review and the additional required training add substantial additional costs.

Based on the figures quoted by MSHA, the ETS applies to 33,490 miners and 3697 contractors who work underground at coal mines. Using these employment figures which total 37,187 underground workers requiring purchase of 2.5 SCSRs per worker at a price of \$650 per SCSR, a total of \$60,428,875 would be the initial expenditure. This figure is \$6,000,000 higher than the total initial cost estimated by MSHA, which also in-

cludes lifeline, costs and costs associated with training requirements. None of these figures address sign cost, storage box costs, or the additional cost associated with state legislation.

Based on the information currently available to the industry in general, it can not be determined if current regulations, training, and procedures were inadequate, or was there a failure to comply as it relates with those two accidents.

The emphasis of this ETS is totally after the fact. There is no discussion, no recommendations or information relating to prevention of this type of accident.

Based on information and reports available, additional reviews and discussions appear needed in the area of mine rescue response and procedures. Are there better, safer, and quicker ways to obtain and process information for use by rescue teams? Should the use and role of the robot be examined and discussed? Has there been training and exposure to the robot use by all mine rescue teams?

Part 48 Training

48.5 (b) (5).

It should be emphasized that barricading should be a last result and escape from the mine should be the initial and primary action in the extreme majority of cases. The pros and cons of barricading need to be discussed in detail before making a barricading decision.

48.6 (b) (5)

Same comment as to 48.5 (b) (5) related to barricading.

48.11 (a) (4) (i) &(ii)

This training should not be required if the individual(s) have signed training forms showing they have received this training on the type of SCSR in use at the mine within the past year.

Miners should not be required to walk the escapeway but, rather use mechanized transportation during the drills. By requiring walking or crawling while carrying two SCSRs in addition to other equipment could cause serious health risks to older miners who have health problems. Some escapeways are extensive in length and have difficult conditions to travel.

Part 50.10 Immediate Notification

There is no need to change the current 50.10 (prior to ETS). This has worked well in the past and changing the wording will only make it easier for MSHA to take enforcement action without thoroughly investigating the issue. There can be difficulty in contacting agencies at certain times of the day or days of the week or on holidays. Is the initial phone call to an unmanned district or field office and leaving a message adequate notification? It could take a good deal of time to go through a phone list trying to contact someone when that time could be used responding to the accident. Is it adequate to call the Arlington Headquarters office and leave a message? It could be very hard to receive a return call from MSHA as a result of phone usage at the mine related to the accident. In the discussion of the ETS, MSHA references "accident investigation" and the issuance of the 103 (k) orders. There have been prior instances when a 103 (k) order has been verbally issued over the phone. If this is done, all rescue and/or recovery efforts would be stopped until MSHA and other enforcement agencies arrive at the mine and plans are de-

veloped and approved for the rescue and/or recovery to proceed. The mine operator is required to provide for mine rescue services and to notify the provider for the need of such services. Initial efforts should be focused on identifying if an accident has occurred and in responding to that accident instead of worrying if you contact MSHA in time to avoid a citation and fine. Many small operations only have one phone line.

There is no need to change or modify 50.2 (h) (6). The current standard is adequate and enforceable. The ETS references press reports as their source for asking for comments on this section. A more credible source, such as the investigation, should be used as a basis for consideration of a change.

MSHA requests comments as to whether 50.10 should be further amended to require that the notification specify the type of accident per existing 50.2 (h) and pertinent details. If MSHA requests the type of accident and pertinent details in the notification, then longer than 15 minutes could be required to gather that information to make it available when MSHA is notified.

75.380

A lifeline installed in an escapeway would be beneficial until an event occurs out by the workers, which dislodges or destroys the lifeline. If workers are dependent solely on the lifeline to guide them out of the mine, they could become confused and disoriented if for some reason the lifeline was not available. Training should also instruct the miners in using their knowledge and experience if they were to encounter an area of missing or destroyed lifeline while escaping.

Deference should be given to the mine operator in installing the lifeline based on the conditions of the mine especially in regards to 380 (d) (7) (iv). The operator's decision should not be questioned or overruled by MSHA personnel.

Lifelines should only be required to be installed in each escapeway to the section loading point or other such point approved in the Mine Emergency Evacuation and Fire-fighting program.

Miners should have the ability to tether themselves together during escapes. This should be a recommendation and not a regulatory standard by MSHA. The miners and mine management are knowledgeable of their personnel and conditions and are best able to make the determination as to type, length, how to attach, storage location, and whether or not to use a tether.

75.383

It is stated that the drills required in 383 (b) will be satisfied by 75.1502 (c) as stated in 75.1502 (c) (4). 383 (b) (2) and (b) (3) are based on 6 weeks not 90 days as in 1502 (c) (2) (ii) (iii). Will these be satisfied by the 90-day drill required in 75.1502 (c) (2) (ii) and (2) (iii)?

75.1502

1502 (c) (1) requires all miners to participate in mine emergency evacuation drills at intervals of not more than 90 days. After the initial traveling by all miners, it would not be necessary for all miners to travel the escapeways unless extreme deviations or changes in the escapeways occur. A lifeline is provided in the escapeway to guide the miners to the surface. Each escapeway is traveled and checked at least every 7 days by

an examiner as required by 75.364 (b) (5). In many mines, the primary and/or alternate escapeway is traveled each shift as the miners travel in and out of the mine.

The requirement that each person don the SCSR every 90 days is unnecessary. Repetition can be an educational tool but it can also be a deterrent. Mines become bored, and disinterested with the same boring routine. The person designated by the operator will be able to evaluate the performance of the persons being trained to determine if individuals need to don the SCSR every 90 days or whether a simulation or visual study material is necessary to refresh and update the person's training. Training in SCSR donning should be required every 90 days with actual donning of the SCSR required every 180 days. This would allow for the rotation of miners donning the SCSR in the same manner as the rotation of traveling the primary and alternate escapeway is allowed. It is also recommended that 75.1502 (1) be changed from a 90-day training requirement to a quarterly requirement. Quarterly training provides operators the flexibility to maximize the training of miners in emergency evacuations and to train miners in a timelier manner if they miss their scheduled drill.

Paragraph 75.1502 (c) (2) is added to enhance mine evacuation. Physically traveling escapeways every 90 days is not training and would not necessarily enhance mine evacuation in the event of an emergency. The ETS requires the operator provide continuous lifelines in both escapeways. Escapeways are examined and traveled in their entirety each week and are traveled every six (6) weeks by a foreman and two workers as required by 75.383 (b) (2) and (b) (3). Escapeways in many long-life mines are never changed once established thereby making travel every 90 days boring and unnecessarily repetitive. SCSR donning and transfer drills should be performed on the surface in areas

resembling underground conditions. SCSR training models used underground would become damaged and destroyed.

Miners should not be required to walk the escapeways in these drills. If they walk, they would be required to carry two SCSRs along with their other equipment. This could create or magnify any health problem a miner may have due to age or physical condition. An additional number of SCSRs are stored on the mantrip if used by miners to travel in and out of the mine. In an actual evacuation, transportation will be used to evacuate the mine personnel as quickly as possible. This same method of transportation should be allowed for the 90 day evacuation drills.

A checklist, to be included with the record of training, would not be necessary and should not be required. Certification that the emergency evacuation drills were held in accordance with the requirements of the section would be adequate. The check list could be used as a guide for the drill but should not be required to be completed and retained.

75.1714-2

The requirement in 1714-2 (g) (2) "and direction signs made of a reflective material shall be posted leading to each cache" is vague as to where these signs should be posted to direct these personnel to the cache of self-rescuers located on the section. The location, number, etc. of these direction signs could be addressed in the plan required in the same section. In most instances, this cache of rescuers will be located on the mantrip and personnel are well aware of where the mantrip is located. Signs should be allowed to say SCSR as an option.

75.1714-4

1714-4 (c) requires the operator to provide additional SCSR devices in the primary and alternate escapeways if the SCSR devices in (a) of 75.1714 do not provide enough oxygen for persons to evacuate the mine. With a minimum capacity of one hour each, two hours of oxygen would be provided to personnel to evacuate the mine. It must be noted that the person evacuating the mine has two SCSRs available to him at that point. If storage of SCSR devices in the primary and alternate escapeways is required, the initial storage location should be the travel time or distance after the use of two SCSR devices. If additional storage locations are required those locations would be at a distance or time of one SCSR device. The wording in 1714-4 (c) is "SCSR devices" which would indicate more than one. This conflicts with answers given to questions in the Compliance Guide, which indicates one initial device, used in one answer and a time of 45 minutes in another answer.

Instead of a storage location in the primary and alternate escapeways, one storage location should suffice in an air lock between the escapeways if the escapeways are adjacent to each other. Lifelines could be used to direct the miners to the storage cache from both escapeways. This location would be addressed in the storage plan and gone over with the miners.

Signs with the letters SCSR should be allowed as an option. A lot more research needs to be done on the outby SCSR storage locations. None of the proposals presented can serve as one universal coal mine standard. Time will be available since at current quoted delivery rates additional SCSR devices for these locations could be quite a while coming.

Several operations currently have storage plans for SCSR devices approved which allow the use of the filter self-rescuers (FSRs) to access the storage location for the SCSRs. The elimination of the FSRs would place an undue burden on those locations. FSRs should not be prohibited. MSHA should not require mine operators to report the total number of SCSRs in use at each underground coal mine, semi-annually to the MSHA District Manager. This would place an undue burden on the operator and could result in additional enforcement action by MSHA. The information should be available at the mine for review and gathering by MSHA personnel.

The storage location of additional SCSRs for outby personnel such as pumpers, belt men, examiners, etc., should be addressed in the outby SCSR storage plan or the mine evacuation plans.

MSHA should provide the option of signs to be of a reflective material or an alternate method to be approved by the District Manager.

It would be burdensome if the coal mine operator is required to provide the MSHA District Manager with information related to problems associated with SCSRs. This should be an information sharing item between the coal industry and MSHA not an enforceable regulation resulting in enforcement action. This information could be retained by the coal mine operator and provided to MSHA as an information exchange for the improvement of coal mine safety.

The ETS is drafted with the assumption that the entire primary and/or alternate escapeways would be contaminated, thereby requiring SCSR usage while traveling that entire length. Hazard evaluations need to be performed in both escapeways to help determine the SCSR storage locations. There also needs to be an evaluation as to the elimi-

nation of hazards in the escapeways that could cause or intensify an emergency situation. This could be reviewed and evaluated on a mine by mine basis by the MSHA District Manager.

No options have been proposed in the ETS for the use of an AMS in the escapeways to identify the areas of the escapeways where smoke, carbon-monoxide, or other contaminants are located. Those areas could be avoided by the escaping miners or the miners would know in what areas contaminants are located requiring the donning of their SCSR devices as a result of the information provided by the AMS.

Following are comments on additional issues proposed at the public hearings in Ms. Patricia Silvey's opening statement in Lexington, KY.

1. Tethers

Tethers should be available and miners should be trained to make a decision as to how and when tethers should be used. Tethers should not be mandated.

2. Training Checklist (75.1502 (c) (3))

The required record keeping associated with the 90-day drills suffice for the need of a checklist. A checklist could be developed and used for guidance but should not be mandated.

3. SCSR Donning During an Evacuation

The unnecessary donning of an SCSR could affect the ability to evacuate if the device is not needed. Currently multi-gas or air quality detectors are available on producing and maintenance sections. Requiring such a detector for an individual miner who is

working alone would not be economically prudent. These individual miners working alone could be instructed to don their SCSR when smoke is encountered which most miners would do at this time. The development of a patch or some other type of indicator that would change color or otherwise provide some type of indication at certain levels of CO would be beneficial.

4. Location of Additional SCSR's

The chart on page 144 of Volume V of the Program Policy Manual has been used to convert travel time to distance for SCSR storage and could be used for that purpose in the permanent regulations. With research and justification, the multiplier could be modified. This chart has been used in the past and no research or evidence has been provided to prevent its continued usage.

5. SCSR Storage Specification Standard

The chart on page 144 of Volume V of the Program Policy Manual has been used to convert travel time to distance for SCSR storage and could be used for that purpose in the permanent regs. With research and justification, the multiplier could be modified. This chart has been used in the past and no research or evidence has been provided to prevent its further usage.

6. Elimination of "FSRs"

Continued usage of FSRs should be allowed unless specific situations or evidence is presented otherwise. A provision should be placed in the final regs to allow for use of new SCSR technology when it is proven and becomes available.

7. SCSR Information Reporting

The referenced information is available for MSHA at most if not all operations. The operator should not have to provide the information but could make it available to MSHA. A bar code could be placed on the SCSR to make information gathering simpler and less labor intensive.

8. SCSR Usage and Problem Reporting

Again this information could be provided but should not be required to be reported. Failure to report would result in a citation and fine. Neither of which would necessarily improve safety and the ability to survive an emergency. An SCSR could be donned when an emergency did not truly exist. The information exchange is necessary and needed but does not need to be part of an enforceable regulation. A bar code on the SCSR would be very helpful in gathering this information.

9. SCSR Storage for Non-section Workers

The accessibility of SCSR storage for non-section personnel should be addressed if needed in the SCSR Storage Plan. This needs to be handled on a mine by mine basis due to the many different mine conditions and situations that would need to be addressed.

10. Reflective Signs

The final rule needs to provide for alternative methods to reflective signs to identify outby SCSR storage locations. These alternative methods could be things such as flashing lights, sirens, etc. and could be approved by the District Manager.

11. Hardened Room or "Safe Haven"

The concept of a "safe haven" or hardened room is appropriate for storing SCSRs between adjacent escapeways. The area could also be used in the primary or alternate escapeways to store SCSRs, water, and other supplies where miners evacuating the mine could enter to transfer SCSRs and to rest before proceeding out of the mine.

The minimum criteria should not be so complex and restrictive as to eliminate the use of such facilities in many mines. Air-lock brattices with sealed doors, not necessarily submarine type, and the ability to provide contaminant-free air would be a welcome place for miners to rest and don fresh SCSRs. At the Lexington, KY public hearing, the idea of "protected transfer stations" for the changing of SCSRs was proposed.

12. Lifelines/Cones

Cones should be standardized on lifelines with the cone end pointing toward the face. Other ways to install lifelines to assist in guided travel to the surface would be to install it along the rib so that if the lifeline were in your right hand you would be traveling toward the surface or installed so that if it were in your left hand you would be traveling toward the surface.

13. Walking Escapeways

Miners should use mechanized equipment to travel the escapeways in the 90-day drills as proposed in 75.1502 (c). Even if mechanized equipment is used, the miners will have to deal with escapeway conditions such as ladders, manddoors, airlocks, and overcasts unless these are constructed so that the equipment can travel through or over them. The escapeways will have lifelines in each of them. Walking is not training. Exposure to escapeway entrances, lifeline installation, and SCSR storage location should provide meaningful and beneficial training. Requiring all miners to walk

the escapeways would cause undue stress on the miners and increase the risk of personal injury. Traveling the escapeways by a new miner would be very beneficial. This could be specified to be performed soon after employment.

14. Realistic Drills

Realistic training drills would be very beneficial but may not be within the resources of many operators. MSHA, NIOSH, and SCSR manufacturers should develop an economical disposable mouthpiece for "expectations" training. This mouthpiece could be used once each year during one of the drills. Conducting a drill in smoke should be performed on the surface since adapting such to the underground would be very difficult for many operators.

15. Scenarios

Additional specific requirements are not required. You can never train for every possible scenario that may be encountered. Miners must be trained to use their experience, common sense and training to deal with emergency situations they may encounter.

16. Evacuation Drills

All emergency evacuation drills need to be in only one section. The differences between 75.1502 and 75.383 need to be addressed. Until these differences are addressed, the escapeways will be traveled every 6 weeks and every 90 days. This is another reason why this promulgation of rules and regs should have followed the normal procedure and not done piecemeal through the emergency provisions route. The ETS has also created conflicts with various state laws and regulations that were previously in effect or which have been recently passed or promulgated.

Section foremen should not be required to travel both escapeways in their entirety before acting as a boss on any working section. One of the escapeways is generally the travelway, which is used to enter or exit the mine. Both escapeways are required to be equipped with lifelines and the SCSR storage locations are to be identified. Any special issues with the escapeways could be addressed with the foreman prior to him acting as a boss on such section or location.

17. Reporting of Mine Fires

The current requirements for reporting mine fires of at least 30 minutes duration are adequate. Any attempt to change the current definition of a mine fire would only lead to conflicts of interpretation and application.

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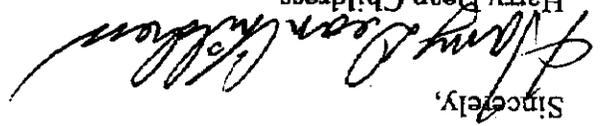
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Harry Dean Childress



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