

TESTIMONY OF

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BEFORE THE

MINE SAFETY AND HEALTH ADMINISTRATION

ON THE

EMERGENCY TEMPORARY STANDARD

MAY 9, 2006

CONSOL Energy is a multi-energy producer of coal, gas and electricity. CONSOL currently has 17 mining complexes located in the United States in Virginia, Pennsylvania, West Virginia, Kentucky and Utah. All CONSOL Energy mining complexes are associated with underground operations with the exception of the Mahoning Valley Mine in eastern Ohio. Mill Creek in eastern Kentucky employs a combination of underground and surface mining methods.

CONSOL Energy appreciates this opportunity to comment on the Emergency Temporary Standard (or ETS) on Emergency Mine Evacuation and to offer a few thoughts and recommendations for improvement of the Emergency Temporary Standard. CONSOL Energy recognizes that the ETS was prompted by the high level concern for miner safety coming out of the tragic events in the West Virginia mining industry earlier this year and supports the underlying goals of the ETS.

I. Part 48 – Training:

CONSOL Energy supports the revised Part 48 training requirements for miners, but will use this opportunity to comment on two areas. First, with regard to hazard training, we recommend clearly providing operators the flexibility to accept Form 5000-23 documentation of applicable up-to-date SCSR training in lieu of hands-on training for non-mine employees, such as visitors, vendors, contractors and other non-mine personnel.

The second recommendation deals with 30 CFR 48.5(b) (5) and 48.6(b) (5) requirements for emergency evacuation and barricading instruction for new and experienced miners. CONSOL Energy sincerely believes that this industry must focus its emergency response efforts on PREVENTION, FIRE FIGHTENING PREPAREDNESS and EVACUATION TRAINING, in that order. Given the fact that coal is a fuel source and the historical evidence of secondary explosions following underground coal mine fire-related events, our employees must be taught that barricading is the avenue of last resort.

CONSOL Energy has put these recommendations into practice and has benefited from strong management and employee support at all levels. Our efforts are extensive and will be touched upon in greater detail later in our comments

II. Part 50 – The 15 Minute Notification Requirement:

The ETS explains that the purpose of the revised Part 50 15-minute notification requirement is to enable the coordination of appropriate mine rescue or other emergency response. This objective is commendable; however, the Part 50 definition of “accident” appears inappropriately broad for this purpose and may prove counter-productive.

As detailed in the NMA comments of April 28th, experience has shown it is not necessary to activate mine rescue personnel and or local emergency response

resources in many instances defined under Part 50 as accidents, such as unplanned roof falls at or above the anchorage point and damage to hoisting equipment that interferes with its use for more than thirty (30) minutes. By requiring the MSHA toll-free answering service, manned by individuals with no knowledge of the mining industry, to distinguish whether a call is the true emergency sets the stage for false alarms, along with the unnecessary mobilization of emergency response personnel. The resultant media reporting frenzy further exacerbates such an error by creating angst among our families and negative press for the industry as a whole. Therefore, a preferable alternative would limit the 15-minute notification to the nationwide toll-free call center only to accidents posing a threat to life or requiring a rescue or other emergency response for trapped or injured miners.

III. Part 75 – Mandatory Safety Standards:

A. Proposed Revisions to Section 75.380(7)(i):

CONSOL Energy supports the agency's efforts to facilitate evacuation under adverse conditions. We commend the agency for drafting the section 75.380(d) (7) provision to permit a lifeline *or equivalent device*. With such an important issue, it is important to elevate substance over form. Recognizing that lifelines in many track entries and belt entries may be ineffective and potentially hazardous, the agency is encouraged to maintain an open mind with regard to equivalent devices. Where lifelines are being used within CONSOL Energy, we are utilizing poly CAB lifelines with reflective material and cones pointing in by per the NIOSH-recommended convention. Our mines also store tag lines in our SCSR storage boxes.

B. Proposed Revisions to Section 75.1502(a)(1):

CONSOL Energy supports the NMA's comments on Section 75.1502(a) (1) (iv), which addresses the "[p]rocedures for the rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency." To prevent full blown mine emergencies and recognizing the first minutes of a fire are critical, CONSOL Energy *prepares* our employees and *expects* them to be first responders by providing hands-on firefighting training using the resources available at their worksite. Experience has shown that this training has given our employees the confidence to efficiently and safely fight a fire when required.

This training is only a portion of our total program of prevention, fire fighting preparedness and evacuation training. A few examples may be helpful in understanding our commitment and investment in this philosophy.

CONSOL Energy's mining group employs five fire prevention managers who audit and maintain our fire prevention and emergency response preparedness efforts. Three mobile gas chromatographs and skilled technical personnel are another part of this arsenal.

At the next level, CONSOL Energy is extremely proud to have developed one large cohesive well-equipped mine rescue team, more than 120 employees strong, consisting of members from our 12 major underground mining operations. These team members are trained and equipped far in excess of any regulatory requirements and participate in mine rescue competitions to further enhance their skills. Our team, along with many other fine teams, assisted at Sago and Aracoma Alma and we commend all of the teams for their dedication and skill under those difficult circumstances.

To assist our mine rescue efforts, CONSOL Energy has strategically located supplies of frequently needed materials, such as non-sparking tools, sampling line, lances, and foam.

Internally conducted MERD training for supervisory personnel also forms a part of our program and I will take a minute to thank MSHA and the state mining agencies for their participation, with special thanks to the Virginia DMME, its chief - Frank Linkous and his staff, particularly Wayne Davis.

We commend the agency for the focus on "smoke" training. For some years now, CONSOL Energy has provided training in smoke for our mine rescue teams and in-smoke evacuation training at our mine sites. We have utilized the services of NIOSH and the WV Extension Service, but also own 16 smokers to facilitate training.

Finally, I will touch briefly on CONSOL Energy's two communications centers which are key components in CONSOL Energy's emergency response process. One center specifically dedicated to our coal group. These centers are manned 24/7 by knowledgeable personnel and act as comprehensive communications and monitoring hubs for key installations and systems, such as fans and CO monitoring. In addition to day-to-day activities, these centers are tasked with mobilizing mine rescue teams and agency notifications when requested.

In summation, emergency response preparedness is more than SCSR and evacuation training. While improving our evacuation capabilities, the industry must maintain its primary focus on prevention and fire fighting response.

C. Proposed Revisions to Section 75.1502(c)(1):

CONSOL Energy adopts by reference the NMA recommendation that the 90-day timeframe for section 75.1502 (c) (1) training be modified to "once each quarter". This change would enable the operator to train more efficiently without any negative effect on the actual training standard.

Our large mines will be training 400-600 people on SCSR transfers, escapeway systems, firefighting and evacuation drills, making flexibility in timing an important consideration. To alleviate any concern of a person being trained at the end of one quarter and at the beginning of the next, however, MSHA could require that the training be accomplished during a "window" of time. For example, the rule could

require that training be accomplished in a month in each quarter (i.e. January, April, July and September). This schedule could be listed in the plan.

D. Proposed Revisions to Section 75.1502(c)(2):

CONSOL Energy has serious reservations regarding the training requirement mandating all miners travel an entire escapeway every 90 days and concerns our employees will come to view these drills as punishment, rather than training, when walking rather than riding out the escapeway is mandated.

A more effective method for training miners on escapeways, would include expectation training, *i.e.* instructing miners on: (1) the location of escapeway entrances from their work stations; (2) the location of the lifeline systems and stored SCSRs; (3) the physical issues in the escapeways (i.e. areas that are low or are more difficult to travel through); and (4) the locations where important escape decisions must be made.

Let's look at a typical CONSOL Energy longwall section as an example. Escapeways are in an entry generally isolated with a solid pillar on one side and a stopping on the other. Once in the escapeway, there is no escape decision to be made until you reach the neck of the section or the escape shaft. Under this circumstance, showing employees the entrance to the escapeway, transporting them by vehicle to the location of SCSR storage and to decision making junctions would achieve enhanced training and education, while still allowing for training on the condition of escapeways and locations of lifelines and stored SCSRs, where applicable. Using this proposal, quality, more focused training on the key criteria will be achieved than is possible under the proposed ETS procedures

E. Proposed Revisions to Section 75.1502(c)(2)(ii):

CONSOL Energy adopts by reference the NMA comments on the SCSR training requirements found in the proposed revisions to section 75.1502(c)(2)(ii). CONSOL Energy joins other NMA members in supporting the hands-on training requirement with transferring and donning SCSRs; however, at sites where multiple units are used, experience indicates enhanced training would be achieved if focused on one specific element during each quarter. In addition, this training should be done in the proper training environment, with reality training done only periodically as determined by the operator.

For example, in CONSOL Energy mines, employees will wear Ocenco M-20 units, with Ocenco EBA- 6.5 devices stored on personnel carriers, on sections, at construction sites, along belt lines and at various other locations. CSE SR-100 units may be available for specialized uses. Under the NMA proposed modification, 1st quarter training may focus on the transfer from an Ocenco M-20 to an Ocenco EBA 6.5 and 2nd quarter training focus on the donning of an SR-100 device. More comprehensive training may also be considered for Part 48 annual refresher training. These proposed modifications, in our view, place quality over quantity and places the best interests and safety of our employees at the forefront.

F. Proposed Revisions to Sections 75.1714-2 and 75.1714-4:

CONSOL Energy supports the agency's efforts to enhance the resources available to our employees and others for the safe evacuation from the nation's underground coal mines in the event of an emergency. The industry is committed to preventing a repetition of the tragic loss of life suffered at Sago and Aracoma Alma. In an emergency situation, however, it is critical that the additional storage of SCSRs contemplated by the ETS be used for prompt evacuation of the mine. Barricading remains a last resort.

1. SCSRs where Personnel Carriers are Used:

ETS Section 75.1714-4 (b) provides that if a mantrip or mobile equipment is used to enter or exit the mine, additional 1-hour or greater SCSR devices "shall be available for all persons who use such transportation." In contradiction with the plain, clear language of this provision, various MSHA districts are misinterpreting this section to require the storage of 2 SCSRs per employee on the personnel carrier if a 1-hour belt wearable unit is not employed. Other methods to comply are available as illustrated by the CONSOL Energy proposed plan, which fully complies with the requirements and purpose of section 75.1714-4(b).

For this reason, CONSOL takes exception to the more prescriptive District position. The CONSOL Energy operations have had generous Ocenco EBA 6.5 SCSR storage plans for many years. Under our current plans, our in-mine storage deploys approximately 14 times more units than required by the ETS. These units are stored strategically along travelways, in active work areas, bleeders and to provide for outby personnel. In addition, under our submitted ETS storage plans, our employees are provided with belt wearable Ocenco M-20s in place of the W-65 chemical unit without oxygen. This means our employees will always have multiple units readily available for their use, should a need arise.

2. SCSRs in Primary and Alternate Escapeways:

Section 75.1714-4 (c) requires additional SCSR storage in the primary and alternate escapeways to augment other SCSR requirements when these requirements do not provide enough oxygen for all persons to safely evacuate. Where the operator determines additional SCSRs are required, the operator must submit a plan setting forth the location, quantity and type of these additional SCSRs and may be required by the district manager to demonstrate the plan's adequacy.

Therefore, based on the plain language of this provision and the preamble, a number of operators, including CONSOL Energy, have proposed, as an alternative, the use of airlocks located between adjacent escapeways for storage of SCSRs, along with other important emergency supplies. The use of an airlock has the additional benefit of providing employees with an area isolated from the main air courses for the transfer of SCSR units. Another alternative proposal is to build a SCSR storage unit into the stopping to permit stored units to be accessed from

either escapeway. Both of these proposals are simple, functional and proven mine-worthy.

In its recent guidance documents, the agency has rejected these proposals, taking the prescriptive position that equal numbers of stored SCSRs are required in both escapeways. The stated basis for rejection is speculative and encroaches on the operator's clearly defined obligations under Section 75.1714-4(c) and should be withdrawn. Section 75.1714-4(c) does not require that identical quantities of additional units be stored both in the primary and alternate escapeway. Instead, this section requires "additional units in the primary and alternate escapeways." Furthermore, the operator's alternatives described above would place the SCSRs in locations that satisfy both primary and alternate escapeway storage.

Various MSHA districts are also requiring our mines to demonstrate a plan's adequacy with regard to spacing at the outset by walking. We recommend the agency consider a specification standard, such as adopted by various states, which establishes SCSR storage locations at intervals based on the entry height and seam characteristics. A standard along these lines is easily understood and implemented; however, we believe the agency should also recognize the quantity of available oxygen provided by the SCSR selected by the operator, not the rated capacity of the SCSR, when determining whether additional units are required to comply with section 75.1714-4(c) requirements.

Finally, the preamble to the ETS poses a series of questions. Most have been addressed by CONSOL Energy's testimony. We will address two remaining inquiries directly.

Question 1: MSHA is soliciting comment on whether operators should report details, such as serial numbers, for SCSR deployed at a mine to the District Manager on a semi-annual basis.

While this information would facilitate research-oriented data gathering and enhance the thoroughness any recall effort, with the substantial increase in units underground, the agency first needs to arrive at a mechanism, such as a bar code, to facilitate this data gathering. Even with such a mechanism, such data gathering will be time consuming. In our view, there is no adequate justification to shoulder this additional responsibility on the industry.

Question 2: MSHA is soliciting comment on whether operators should be required to notify the agency of incidents of SCSR failure or use, as well as requiring the operator to maintain failed units for 90 days.

CONSOL Energy has not objection to notifying the agency of failed units and providing them with the units, subject to agency agreement to allow the operator to participate in any testing of the failed unit and to share any test results with the operator. However, there is no valid purpose for the agency to be notified of used or damaged units, unless there is a pattern of damage indicative of a product defect.

In closing let me again thank you for providing this opportunity. I would be pleased to respond to any questions you may have.

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