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PROCEDURE INSTRUCTION LETTER NO. I07-V-05

Jerry Bentley for

FROM: KEVIN G. STRICKLIN
Administrator for
Coal Mine Safety and Health

SUBJECT: Procedures for Implementation of Program Information
Bulletin No. P07-03

Scope

This Procedure Instruction Letter (PIL) applies to all MSHA District personnel involved in approving mine operators' emergency response plans that are required under Section 2 of the Mine Improvement and New Emergency Response Act of 2006 ("MINER Act"), Pub. L. 109-236 (June 15, 2006), amending 30 U.S.C. § 876.

Purpose

This PIL is to reaffirm that Program Information Bulletin No. P07-03 ("the PIB") is a non-binding guidance document that was issued in response to requests from the mining industry for guidance in implementing Section 2 of the MINER Act.

Procedure Instructions

In approving ERPs, MSHA District Managers must exercise their discretion. MSHA District Managers should consider all comments submitted by miners or their representatives, and evaluate alternative procedures for compliance suggested by the operator. In addition, MSHA District Managers should consider specific conditions at the mine in question.

Background

Section 2 of the MINER Act requires that each underground coal mine operator adopt an ERP that, among other things, provides for emergency supplies of breathable air for individuals trapped underground sufficient to maintain such individuals for a sustained period of time. MSHA issued PIB No. P07-03 on

February 8, 2007, in response to requests from the mining industry for guidance on the development of ERPs for emergency supplies of breathable air.

Concerned that the PIB was a binding rule, the National Mining Association (“NMA”) challenged the PIB as an unlawful final rule in the United States Circuit Court of Appeals for the District of Columbia Circuit in a case styled National Mining Association v. Mine Safety and Health Administration, D.C. Circuit No. 07-1068.

In settlement of that lawsuit, MSHA is issuing this PIL to reaffirm that the PIB is a non-binding guidance statement.

Authority

Federal Mine Safety and Health Act of 1977, as amended by the MINER Act.

Filing Instructions

This procedure instruction letter should be filed behind the tab marked “Procedure Instruction Letters” in the binder for Program Policy Handbooks and Procedure Instruction Letters.

Issuing Office and Contact Person

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