

Form #3

ED

2025 APR 27 P 4: 41

SECRETARY OF STATE

Authorized Signature



L. Thomas Bulla, Secretary
Department of Commerce
State Capitol
Building 6, Room 525
Charleston, WV 25305-0311

State of West Virginia
Joe Manchin III
Governor

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April 26, 2006

James M. Dean, Acting Director
Office of Miners' Health, Safety
and Training
1615 Washington Street East
Charleston, West Virginia 25311-2126

Dear Director Dean:

Upon review of your request to file the agency approval of a proposed rule under Title 56, Series 4, which governs protective clothing and equipment for mines and miners in the state of West Virginia. I find the proposed rule satisfactory and approve your filing of the regulations.

Sincerely,

Tom Bulla
by Brian Helmick

L. Thomas Bulla
Cabinet Secretary

LTB/ks

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: April 27, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Office of Miners' Health, Safety and Training
1615 Washington Street East
Charleston, West Virginia 25311-2126
304 558-1425

LEGISLATIVE RULE TITLE: Title 56 Series 4

1. Authorizing statute(s) citation 22A-1-6 and 22A-1-38

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

February 28, 2006

b. What other notice, including advertising, did you give of the hearing?

Mailed the Notice of Public Hearing along with copy of the Emergency Rules to all
Underground Mines, Active and Inactive Permitted with the WV Office of MHST

c. Date of Public Hearing(s) *or* Public Comment Period ended:

March 31, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- c. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

April 27, 2006

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Jim Dean, Acting Director
WV Office of MHST
1615 Washington Street East
Charleston, WV 25311-2126
304 558-1425, 304 558-4875 (Fax)

James.Dean@mines.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

March 31, 2006

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

BRIEF SUMMARY OF RULE 56 CSR 4

The agency's mission is to protect the health and safety of all persons working on mine property in West Virginia. These emergency regulations create a framework for the implementation of the requirements of Senate Bill 247. (Senate Bill 247 required additional self-contained self rescuers, rescue chambers, along with communication and locating devices for all miners. These emergency regulations established procedures for storing self rescuers, and created a Mine Safety Technology Task Force to study, evaluate, and approve equipment and products currently available to meet these requirements.

Additional modifications to the rule will be required after the Task Force completes their findings and written report to the Director as specified in Section 4.1. The time line the Task Force had to complete their findings and make its recommendations exceeded that of the time line of the filing requirements of the rule.

TITLE 56 – SERIES 4
RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

FACTS AND CIRCUMSTANCES

In January 2006 the State of West Virginia experienced two coal mine tragedies where 14 miners were trapped and perished underground, one from an explosion and one from a belt fire.

In both cases had emergency shelters/chambers, underground wireless communications, and wireless tracking devices been available their chance of survival would have been greatly increased.

The State of West Virginia needs to ensure that laws are in place that provide for the necessary emergency provisions for its coal miners when situations arise endangering their lives.

This rule provides for those emergency provisions and establishes a task force to provide technical assistance with the commercial availability for these provisions to the industry.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

RULES

Rule Title: 56 CSR 4 GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV OFFICE OF MINERS HEALTH SAFETY & TRAINING

Address: 1615 WASHINGTON STREET EAST
CHARLESTON, WV 25311-2126

Phone Number: 304 558-1425 Email: James.Dean@mines.state.wv.us
caphillips@mines.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government

THE PROPOSED RULL WILL HAVE NO FINANCIAL EFFECT ON THE AGENCY'S
BUDGET. ALL INSPECTION AND COMPLIANCE WILL BE ACCOMPLISHED THROUGH
EXISTING AGENCY STAFF MANDATED DUTIES.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	- 0 -	- 0 -	- 0 -
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: 56 CSR 4 RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

Rule Title: 56 CSR 4 RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: 2-1-06

Signature of Agency Head or Authorized Representative

C. A. Phillips

FILED
JUN 27 P 4:42
WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE RULE

OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING

TITLE 56

SERIES 4

EMERGENCY RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

§56-4-1. General.

1.1. Scope. -- These emergency rules pertain to the implementation of provisions of W. Va. Code § 22A-2-55, relating to the regulation of protective clothing and equipment worn by persons underground by the Office of Miners' Health, Safety and Training.

1.2. Authority. -- W. Va. Code § 22A-2-55.

1.3. Filing Date. -- February __, 2006.

1.4. Effective Date. -- _____, 2006.

§56-4-2. Preamble.

2.1. Purpose - The primary goal of section fifty-five, article two, chapter twenty-two-a of the Code is to protect the health and safety of this State's coal miners by requiring minimum standards for the protective clothing and equipment worn by each underground miner. The purpose of these rules is to implement the mandate of section fifty-five, article two, chapter twenty-two-a of the Code by requiring coal mine operators to provide each underground miner

with certain protective equipment and by detailing the requirements for such protective equipment. In implementing such mandate, it is recognized that different types of protective equipment may be developed to satisfy the minimum requirements for protective equipment for each mine, depending upon the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and technological advances.

2.1.1. Exiting a mine is the primary escape procedure to be used by miners in the event of an emergency underground. Self-contained self-rescue devices ("SCSRs") are intended primarily to provide miners with breathable air while attempting to exit the mine during an emergency. The secondary purpose of SCSRs, however, is to provide a source of breathable air to miners that cannot exit a mine during an emergency and must await rescue by personnel on the surface. Emergency shelters/chambers also provide a source of breathable air for trapped miners unable to escape from the mine. Wireless emergency communication devices and wireless tracking devices are intended to assist in both directing miners out of an endangered mine and locating trapped miners awaiting rescue by personnel on the surface. In addition to the purposes stated above, the intended purpose of these rules is to establish a regulatory regime enabling the proper implementation of these technologies in West Virginia's underground mines.

§56-4-3. Definitions.

3.1. Unless herein defined, all terms used in this rule shall have the same meaning as they are defined in W. Va. Code §22A-1-2 and W. Va. Code §22A-2-55.

3.2. "Code" shall mean the Code of West Virginia, 1931, as amended.

3.3. "Director" shall herein refer to the Director of the Office of Miners' Health, Safety and Training.

§56-4-4. Mine Safety Technology Task Force.

4.1. Within seven (7) calendar days of the effective date of these rules, the Director shall establish a Mine Safety Technology Task Force to provide technical and other assistance related to the implementation of the new technological requirements set forth in section fifty-five, article two, chapter twenty-two-a of the Code. The task force shall be comprised of three persons from the major employee organization representing coal miners in this state and three persons from the major trade association representing underground coal operators in this state. All actions of the task force shall be by unanimous vote.

4.2. The task force, working in conjunction with the Director, shall immediately commence a study to determine the commercial availability and functional and operational capability of the SCSRs, emergency shelters/chambers, wireless communication devices and wireless tracking devices required hereunder. The task force

shall also study issues related to the implementation, compliance and enforcement of the safety requirements contained herein. Additionally, the task force may study related safety measures, including the provision of additional surface openings and/or escapeways in lieu of or in addition to the provision of SCSRs or emergency shelters/chambers. In conducting its study, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, radiocommunication and telemetry experts and relevant state and federal regulatory personnel.

4.3. The Director, or his designee, shall preside over all meetings of the working group.

4.4. Within ninety (90) calendar days of the effective date of these rules, the task force shall provide the Director with a written report summarizing its findings regarding the commercial availability and functional and operational capability of the SCSRs, emergency shelters/chambers, wireless communication devices, wireless tracking devices and related safety measures required hereunder. The report shall also include the task force's findings and recommendations regarding implementation, compliance and enforcement of the safety requirements contained herein. The report also shall set forth the task force's recommended implementation, compliance and enforcement plans regarding the aforementioned technologies.

4.5. Prior to approving any emergency shelter/chamber, wireless communication device or wireless tracking device pursuant to the provisions of sections 5.4, 8.1, and 9.1 of these rules, respectively, the Director shall review the task force's written report and the findings set forth therein and shall consider such findings in making any approval determination.

§56-4-5. Self-Contained Self-Rescue Devices Provided for Escape from Mines.

5.1. Each person underground shall be provided a SCSR in accordance with the provisions of subdivision (1), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code. In addition, the operator shall provide caches of additional SCSRs or devices providing equivalent protection throughout the mine in accordance with a Storage Cache Plan approved by the Director.

5.1.1. Each SCSR shall be adequate to protect a miner for one (1) hour or longer: *Provided, however,* That nothing contained herein shall preclude an operator from providing each person underground with a self-rescue device or a SCSR that provides less than one (1) hour of protection that is nevertheless adequate to provide an amount of breathable air sufficient for travel to the nearest storage cache or escape facility: *Provided, further:* That the total amount of breathable air provided by the operator meets the minimum amount of three (3) hours of cumulative protection contemplated by the provisions of Section 5.1 and Section 5.2.1 of

these rules, as well as the minimum protection amounts mandated by the provisions of 5.3.3 and 5.4.3.

5.1.2. Each cache shall be housed in a container constructed of fire retardant material or material treated with a fire retardant paint or laminate and constructed in a manner capable of protecting the self-contained self rescue devices stored therein from damage by fire.

5.1.3. Each operator shall train each miner in the use of the SCSRs employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year. This training shall be in addition to the annual retraining required by MSHA.

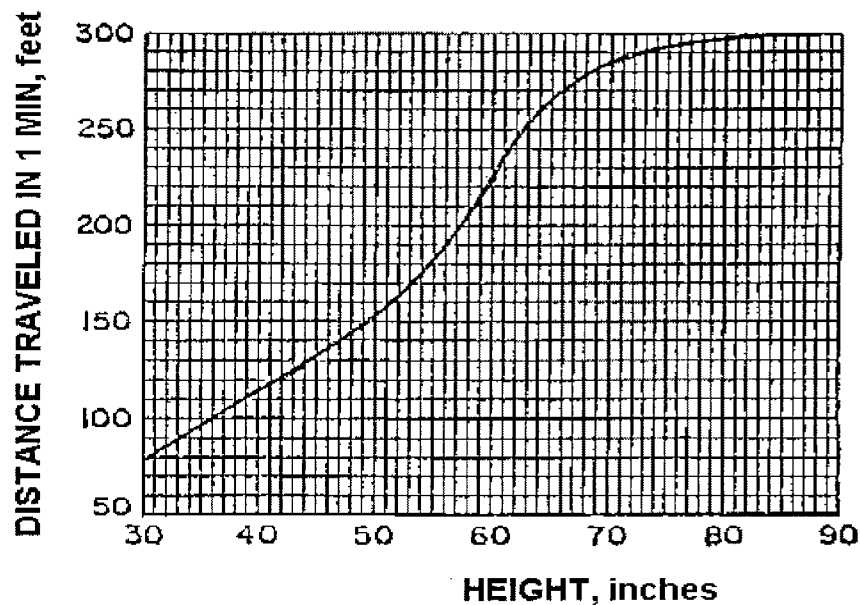
5.2. One cache shall be placed at a readily available location within five hundred (500) feet of the nearest working face in each working section of the mine. One cache shall be placed at a readily available location within five hundred (500) feet of each active construction or rehabilitation site within the mine. Distances greater than five hundred (500) feet not to exceed one thousand (1000) feet are permitted, however, where miners are provided with personal SCSRs rated for less than sixty (60) minutes, travel to these caches is not to exceed five (5) minutes as determined by the height/travel time chart as specified in Section 5.3.2.

5.2.1. Each cache placed at each working section and each active construction or rehabilitation site shall contain sufficient additional SCSRs to provide each miner reasonably expected to be at the working section or active construction or rehabilitation site with no less than two (2) additional SCSRs, or an equivalent amount of breathable air for escape. During crew changes involving a mantrip at a working section or an active construction or rehabilitation site, SCSRs stored on such mantrip shall satisfy the total number of SCSRs required for such personnel.

5.3. Additional storage caches shall also be placed in readily available locations throughout the remainder of the mine as follows:

5.3.1. Beginning at the storage cache located at the working section or active construction or rehabilitation site, and continuing to the surface or nearest escape facility leading to the surface, the operator shall station additional storage caches at calculated intervals that a miner may traverse in no more than thirty (30) minutes traveling at a normal pace, taking into consideration the height of the coal seam.

5.3.2. Said intervals shall be calculated in accordance with the following chart:



5.3.3. Each such additional cache shall contain a number of additional SCSRs equal to or exceeding the total number of employees reasonably likely to be in that area.

5.4. Emergency Shelters/Chambers for Use in the Event That Immediate Exit is not Possible.

5.4.1. An emergency shelter/chamber shall be maintained within one thousand (1000) feet of the nearest working face in each working section. Such emergency shelter/chamber shall be approved by the Director and shall be constructed and maintained in a manner prescribed by the Director.

5.4.2. Upon the Director's receipt of the written report

required by section 4.4 of these rules, the Director shall review the written report and the findings set forth therein and shall consider such findings in making approval determinations regarding any emergency shelter/chamber.

5.4.3. Any emergency shelter/chamber approved by the Director shall be:

a. equipped to provide each miner at the working section with no less than twenty-four (24) hours of breathable air;

b. constructed in such a manner so as to reasonably exclude dangerous air and gases from the interior of the rescue shelter/chamber;

c. properly equipped with first aid materials;

d. equipped with sufficient amounts of food and water to sustain each miner at the working section for at least twenty-four (24) hours while awaiting rescue;

e. equipped with a device for communication with rescuers or other persons on the surface; and

f. maintained in accordance with applicable MSHA requirements.

5.4.4. As soon as practicable, the Director shall notify all operators of the emergency shelters/chambers approved for use in underground coal mines.

5.4.5. Each operator shall train each miner in the use of the approved emergency shelter/chamber employed at the mine, and

refresher training courses for all underground employees shall be held during each calendar year. This training shall be in addition to any annual retraining required by MSHA.

5.4.6. If there are no emergency shelters/chambers approved within one year of the Director's receipt of the task force's report, operators shall install in lieu of an emergency shelter/chamber, caches of SCSRs sufficient to provide each miner reasonably expected to be at the working section with no less than sixteen(16) additional SCSRs, or an equivalent amount of breathable air.

5.4.7. Sixteen (16) SCSRs may be used in lieu of an emergency shelter/chamber when mine design or layout prohibits use of such facilities.

§56-4-6. Storage Cache Plan.

6.1. Within thirty (30) calendar days of the effective date of these rules, all operators of all mines shall submit a Storage Cache Plan for approval by the Director. The design, development, submission, and implementation of the Storage Cache Plan shall be the responsibility of the operator of each mine.

6.2. Within thirty (30) calendar days after submission of the initial Storage Cache Plan, the Director shall either approve the plan as submitted, or shall reject and return the plan to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the plan is rejected, the Director

shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such plan.

6.3. In developing the initial Storage Cache Plan, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine the operator deems relevant to the development of the Storage Cache Plan.

6.4. The Storage Cache Plan shall include the following:

6.4.1. The size and physical features of the mine;

6.4.2. The maximum number of persons underground during each working shift;

6.4.3. The proposed location of the various storage caches and the emergency shelter/chamber in relation to persons underground; and

6.4.4. A schedule of compliance, which shall include:

a. a narrative description of how the operator will achieve compliance with subdivision (2), subsection (f), section fifty-five, article two, chapter twenty-two-a of the Code.

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when the implementation of the proposed plan will be complete.

6.4.5. Any such schedule of compliance shall be

supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

6.5. Each operator shall submit as attachments to its Storage Cache Plan the following:

6.5.1. A statement that the analysis and evaluation required by section 6.3 of these rules has been completed;

6.5.2. A statement indicating the training dates for the use of the SCSRs; and

6.5.3. The name of the person or persons representing the operator, including his or her title, position, mailing address and telephone number, who can be contacted by the Director for all matters relating to the Storage Cache Plan and the weekly inspections of each cache.

6.6. Within thirty (30) calendar days of the Director's approval of the plan, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such number of additional SCSRs consistent with the operator's schedule of compliance.

6.7. At any time after the Director has approved an operator's Storage Cache Plan, the operator may submit proposed modifications or revisions to its plan along with the reasons therefor to the Director.

6.7.1. Within thirty (30) calendar days after receipt by the Director of any proposed revisions or modifications to the

Storage Cache Plan, the Director shall either approve or reject the revisions, stating in detail the reasons for such rejection.

6.7.2. The Director may require modifications to a Storage Cache Plan at any time following the investigation of a fatal accident or serious injury, as defined by Title 36, Series 19, Section 3.2, if such modifications are warranted by the findings of the investigation.

6.7.3. Within thirty (30) calendar days of the Director notifying operators of the emergency shelters/chambers approved by the Director under these rules, the operator shall submit a revised Storage Cache Plan in accordance with the provisions of this section setting forth the type of emergency shelter/chamber to be installed pursuant to section 5.4 these rules. The revised storage cache plan shall also include a revised schedule of compliance and information regarding the emergency shelter/chamber that corresponds to the information regarding the storage caches required under this section of these rules.

6.8. If the Director, in his sole discretion, determines that an operator has failed to provide a Storage Cache Plan, has provided an inadequate Storage Cache Plan, has failed to comply with its approved Storage Cache Plan, or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subdivision (2), subsection (f), section

fifty-five, article two, chapter twenty-two-a of the Code or these rules, the Director shall issue a cessation order to the operator for the affected mine.

§56-4-7. Placement of Intrinsically Safe Battery-Powered Lights and Lifeline Cords.

7.1. Intrinsically safe battery-powered strobe lights shall be affixed to each cache of SCSRs and shall operate continuously or be capable of automatic activation in the event of an emergency.

7.1.1. All intrinsically safe battery-powered strobe lights affixed to each cache of SCSRs shall be approved by MSHA and maintained in accordance with applicable MSHA requirements.

7.2. A reflective sign with the words "SELF-RESCUER" or "SELF-RESCUERS" shall be conspicuously posted at each such cache and reflective direction signs shall be posted leading to each cache.

7.3. Lifeline cords installed in primary escapeways shall be attached to each cache and extend from the last permanent stopping to the surface or nearest escape facility, excluding belt and track entries, and must:

7.3.1. be made of durable material;

7.3.2. be marked with reflective material every twenty-five (25) feet;

7.3.3. be located in such a manner for miners to use effectively to escape; and

7.3.4. have directional indicators signifying the route of escape placed at intervals not exceeding one hundred (100) feet.

7.4. The operator shall conduct weekly inspections of each cache of additional SCSRs, the affixed strobe lights, and each lifeline cord or other similar device to ensure that each will function properly in the event of an emergency.

§56-4-8. Wireless Emergency Communication Devices.

8.1. A wireless emergency communication device approved by the Director shall be worn by each person underground and shall be provided by the operator.

8.1.1. As soon as practicable, the Director shall notify all operators of the wireless emergency communication devices approved by the Director for use by each person underground pursuant to subdivision one, subsection (g), section fifty-five, article two, chapter twenty two-a of the Code.

8.1.2. The wireless emergency communication devices approved by the Director must be capable of receiving emergency communications from the surface at any location throughout the mine.

8.1.3. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

8.2. All wireless emergency communication devices approved by the Director shall have received prior approval by MSHA and be maintained in accordance with applicable MSHA requirements.

8.3. Within sixty (60) calendar days of the Director giving notice of the approved wireless emergency communications devices, all operators shall submit to the Director a schedule of compliance.

8.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (g), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

8.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

8.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the

operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

8.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

8.4. In developing the schedule of compliance, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine and any other aspect of the particular mine relevant to the provision and operation of the wireless emergency communication devices.

8.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless emergency communication devices consistent with the operator's schedule of compliance.

8.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent compliance with subsection (g), section fifty-five, article two,

chapter twenty-two-a of the Code or these rules, the Director shall issue a cessation order to the operator for the affected mine.

§56-4-9. Wireless Tracking Devices.

9.1. A wireless tracking device approved by the Director shall be worn by each person underground and shall be provided by the operator.

9.1.1. As soon as practicable, the Director shall notify all operators of the wireless tracking devices approved by the Director for use by each person underground pursuant to subdivision one, subsection (h), section fifty-five, article two, chapter twenty two-a of the Code.

9.1.2. The wireless tracking devices approved by the Director must be capable of providing real-time monitoring of the physical location of each person underground, which at a minimum shall mean the capability to identify the presence of each person underground in the event of an emergency.

9.1.3. No person shall discharge or in any other way discriminate against any miner based on information gathered by such wireless tracking device during non-emergency monitoring.

9.1.4. Each operator shall train each miner in the use of the approved device employed at the mine, and refresher training courses for all underground employees shall be held during each calendar year.

9.1.5. The operator shall install in or around the mine

any and all equipment necessary to provide real-time emergency monitoring in accordance with the provisions of section 9.1.2 of these rules.

9.2. All wireless tracking devices approved by the Director shall have received prior approval by MSHA and be maintained in accordance with applicable MSHA requirements.

9.3. Within sixty (60) calendar days of the Director giving notice of the approved wireless tracking devices, all operators shall submit to the Director a schedule of compliance.

9.3.1. The schedule of compliance shall include:

a. a narrative description of how the operator will achieve compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code;

b. a schedule of measures, including an enforceable sequence of actions with milestones, leading to compliance; and

c. a statement indicating when full compliance will be achieved.

9.3.2. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

9.3.3. Within thirty (30) calendar days after submission of the schedule of compliance, the Director shall either approve the schedule of compliance as submitted, or shall reject and return the schedule of compliance to the operator for modification and

resubmission, stating in detail the reasons for such rejection. If the schedule of compliance is rejected, the Director shall give the operator a reasonable length of time, not to exceed fifteen (15) calendar days, to modify and resubmit such schedule of compliance.

9.3.4. Where applicable, the operator shall submit certified progress reports no less frequently than every sixty (60) calendar days until full compliance is achieved.

9.4. In developing the schedule of compliance, the operator shall take into consideration the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine, and any other aspect of the particular mine relevant to the provision and operation of the wireless tracking devices.

9.5. Within thirty (30) calendar days of the Director's approval of the operator's schedule of compliance, the operator shall provide to the Director a copy of any contract, purchase order, or other proof of purchase of such wireless tracking devices consistent with the operator's approved schedule of compliance.

9.6. If the Director, in his sole discretion, determines that an operator has failed to provide a schedule of compliance, has provided an inadequate schedule of compliance, has failed to meet its approved schedule of compliance or has failed to provide a copy of any contract, purchase order or other proof of purchase required under this section, in an effort to delay, avoid or circumvent

compliance with subsection (h), section fifty-five, article two, chapter twenty-two-a of the Code or these rules, the Director shall issue a cessation order to the operator for the affected mine.

IN RE: EMERGENCY RULE GOVERNING PROTECTIVE
CLOTHING AND EQUIPMENT

TITLE 56, SERIES 4

PUBLIC HEARING

FRIDAY, MARCH 31, 2006
9:15 A.M.

NATIONAL MINE SAFETY AND HEALTH ACADEMY
1301 AIRPORT ROAD
BEAVER, WEST VIRGINIA



ORIGINAL

Barbara Harris Reporting Services

Charleston, West Virginia (304) 345-4742

APPEARANCES

On Behalf of West Virginia Miners' Health, Safety
and Training:

TERRY FARLEY

Also Appearing: CHRIS HAMILTON
GARY WHITE
TOM HUGHES

Reporter's Certificate - 10

P R O C E E D I N G S

1
2 MR. FARLEY: Good morning. It's now about
3 9:15. I think probably everybody that's coming is
4 probably just about here, so. I'm Terry Farley with
5 the West Virginia Office of Miners' Health, Safety,
6 and Training. And, for the record, today's date is
7 March 31st, 2006. Our purpose in conducting this
8 public hearing today is to receive oral and/or written
9 comments pertaining to the Emergency Rule identified
10 as Title 56, Series 4 that was filed with the
11 Secretary of State on February 27, 2006 and became
12 effective the following day, on February 28, 2006.
13 The events at Sago and Aracoma that led us to this
14 point and the promulgation of this new rule are
15 obvious and fresh in everyone's mind and for the sake
16 of expediency here they need not be reviewed here
17 today.

18 Those who wish to offer oral comments today
19 will be afforded the opportunity to do so in the order
20 you signed in this morning. I must also remind you
21 that we are not here today to respond to questions
22 pertaining to the regulations. However, all written
23 and oral comments pertaining to Title 56, Series 4 are

1 welcome and will be accepted. I have a list of people
2 who have requested the opportunity to speak and when I
3 call your name please come forward to this podium,
4 face the direction of our stenographer. Also please
5 state your name and please identify any company or
6 organization that you may represent.

7 The first person who requested an opportunity
8 to speak is Mr. Randall Harris.

9 MR. HARRIS: (Nods negatively.)

10 MR. FARLEY: You didn't?

11 MR. HARRIS: No.

12 MR. FARLEY: Okay. Mt. Gay address?

13 MR. HARRIS: Yeah.

14 MR. FARLEY: Beg your pardon. Well, that
15 leads us to Mr. Chris Hamilton of the West Virginia
16 Coal Association. And I think Chris will be followed
17 by Mr. Gary White.

18 MR. HAMILTON: Terry, if Gary and I are the
19 only two that's scheduled to speak I think I will just
20 spare the few of us in attendance today from hearing
21 these remarks and just simply submit them as written
22 comment.

23 MR. FARLEY: Thank you very much. Mr. White,
24 the floor is yours.

1 MR. WHITE: Thank you, Mr. Farley. As stated
2 by Mr. Hamilton, in the interest of time I will simply
3 submit my comments in written form, also.

4 MR. FARLEY: Thank you, Gary.

5 MR. WHITE: Thank you.

6 MR. FARLEY: Sir?

7 MR. HUGHES: I didn't get to sign up.

8 MR. FARLEY: Do you wish to speak?

9 MR. HUGHES: Yes. I'm sorry, I didn't --

10 MR. FARLEY: That's alright.

11 MR. HUGHES: I didn't see the sheet. Sorry
12 for the delay.

13 MR. FARLEY: I'm glad someone actually wants
14 to speak because I was about to say, "We're out of
15 here."

16 MR. HUGHES: Okay. My name is Tom Hughes.
17 I'm with Hughes Supply Company, a West Virginia
18 company. I sell communication devices and we are an
19 MSHA approved contractor for underground
20 communications. I just want to start out by saying
21 that I don't envy the people that are on this task
22 force. I don't envy the job that they have to do. I
23 especially don't envy Director Beane's position. They
24 have been asked to come up with recommendations for

1 rules to a law that although it's well-intentioned, in
2 my opinion, it's full of questions about what can be
3 approved.

4 MR. FARLEY: Sir, excuse me. Would you turn
5 the volume up? There should be a dial, I think.

6 MR. HUGHES: Okay. How's that?

7 MALE VOICE: Perfect.

8 MR. HUGHES: I want to speak on -- I just
9 want to make some comments on the devices that we are
10 looking to be approved by the director, especially the
11 communication devices. You know, the one thing that I
12 also want to say is that working with -- I have seen
13 these guys in action and the task force has shown a
14 real commitment to work together and I think they
15 should be very, very proud of that. They've got a lot
16 of hard questions in front of them, they need to come
17 up with a lot of hard solutions. The questions of how
18 many SCSR's and how far to place storage caches is one
19 that I'm sure that this group will answer.

20 The questions that concern me the most,
21 though, are the ones on communication devices and
22 tracking devices and I think those questions are -- or
23 some of those questions are, "What does this law
24 actually demand?" Communication devices worn on each

1 miner, "Is this practical? What are they supposed to
2 do? How are they going to work? Shouldn't they be
3 two-way? Will they work post disaster? What is
4 acceptable? What is available?"

5 Now, like I said, I'm in the business of
6 underground communications. I've been in this
7 business several years now. I can sell you a good
8 two-way communication system and under normal working
9 conditions it will be great, but it has its limits.
10 In a worst case scenario of a situation such as Sago
11 all bets are off. Now, I agree that we should be
12 advancing technology towards a system that is disaster
13 proof. I believe, given enough time, this can be a
14 reality. I feel as if there are companies out there
15 with products that show a lot of potential. I don't
16 believe that we should have to rush to approve
17 something. I totally disagree with approving
18 something because this is better than what I have now.
19 If we accept this from one company's product, then
20 what else will we have to accept? Are you prepared to
21 approve anyone's product that works sometimes? We
22 need to set a standard. Devices need to perform. Why
23 approve something and force companies to buy it when
24 it is not proven to work? Why pick a product that has

1 been tested and found to work at some locations and
2 not others and then have a law that says all coal
3 companies have to buy it? Is this going to protect
4 miners? No one wins if a mine has a system that
5 doesn't work.

6 If this is done, if devices are approved just
7 because we don't have anything any better, then what
8 is this going to -- how is this going to affect the
9 development of other products or other systems that
10 will work? If every coal company has to buy a certain
11 system whether it works there or not, then I know --
12 or at least I would think that if I've got something
13 in development, "Well, where's my market at?" So are
14 you going to kill that by forcing coal companies to
15 buy a system that will not work in their mines. But
16 then they can say afterwards, "Well, I bought what you
17 required and so, you know, I spent the money, I'm not
18 spending any money on anything else." Something may
19 come up later that will work but they have already
20 spent the money and they won't want to go back and
21 necessarily spend the money again.

22 Now, the task force is doing something in
23 regard to the SCSR's and I really and truly believe
24 that what they have done with the creation of the

1 storage caches that that's going to save lives. And I
2 believe that they would have saved lives at Sago.
3 That's all I'll say about Sago. That one thing, I
4 think the thing about the SCSR's, the rescue chambers,
5 and the immediate response, those rules and
6 regulations are out there and that right there we
7 should look upon as that is a tremendous improvement.
8 The storage caches especially can be -- you can take
9 care of that right now.

10 But post disaster communications needs more
11 work and you need to let these companies that are
12 trying to develop these systems more time and so I
13 would ask that what comes out of this task force is a
14 recommendation that the communications and tracking
15 devices needs more work and should get more time for
16 the future technology. Thank you.

17 MR. FARLEY: Thank you, sir. Is there anyone
18 else who wishes to speak?

19 (No response.)

20 MR. FARLEY: If not, I think that concludes
21 our business and the public hearing is over. Thank
22 you for coming.

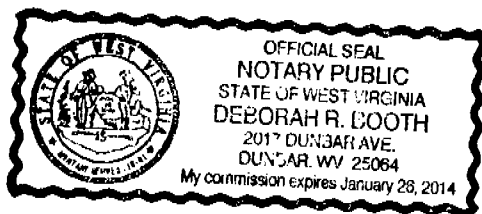
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF RALEIGH, to-wit:

I, Deborah R. Booth, Notary Public and
Certified Court Reporter, do hereby certify that the
foregoing is a correct verbatim record of the
proceedings had at the time and place set forth when
this case was called for hearing.

Given under my hand this 9th day of April,
2006.



Deborah R. Booth, CCR
Notary Public

My commission expires January 26, 2014.

Barbara Harris Reporting Services
(Deborah R. Booth, Certified Court Reporter)

304.345.4742

WV OFFICE OF MINERS HEALTH, SAFETY AND TRAINING

PUBLIC HEARING

TITLE 56 SERIES 4

EMERGENCY RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

March 31, 2006

NATIONAL MINE HEALTH AND SAFETY ACADEMY
1301 AIRPORT ROAD, BEAVER WEST VIRGINIA
9:00 A.M.

PROCEEDING CONDUCTED BY: TERRY L. FARLEY, ADMINISTRATOR, WVOMHST

ATTENDEES:

Please sign on first line Print name under signature	Company and Address	SUBMITTING COMMENT		Written Public	
		Y	N	Y	Y
<u>BREAN KETTON</u>	<u>Wingo Logan Coal Co</u>	☐	☒	☒	☒
<u>Dilcie Isipo</u>	<u>100 Wingo Logan Ave</u> <u>Wingo Logan Coal Co</u> <u>PO Box 1000 L. Shepherd WV 25183</u>	☐	☒	☐	☐
<u>Tim Rutherford</u>	<u>Coal Sales</u>	☐	☒	☐	☐
<u>Stephen L. Cook</u>	<u>W.Va. Bd of Coal Mine</u> <u>Health & Safety</u>	☐	☒	☐	☐
<u>Don Mletus</u>	<u>C.T. Coal Corp</u> <u>Box 528 Man W's 5635</u>	☐	☐	☐	☐
<u>Henry K. Caty</u>	<u>Shelby Coal Corp</u> <u>Box 1763 Mount WV 25621</u>	☐	☐	☐	☐
<u>Frank Fort</u>	<u>Markey Coal Services</u>	☐	☒	☒	☐

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<u>Donna E. Cook</u>	☒	☒	☒	☒	☒
<u>Barry E. Cook</u>	☒	☒	☒	☒	☒
<u>Robert Edgum</u>	☒	☒	☒	☒	☒
<u>Robert Ribary</u>	☒	☒	☒	☒	☒
<u>Mike Vaught</u>	☒	☒	☒	☒	☒
<u>Mike Vaught</u>	☒	☒	☒	☒	☒
<u>Shane McPherson</u>	☒	☒	☒	☒	☒
<u>Shane McPherson</u>	☒	☒	☒	☒	☒
<u>Forrest Sammons</u>	☒	☒	☒	☒	☒
<u>Alvin Glensin</u>	☒	☒	☒	☒	☒
<u>Dennis Wellman</u>	☒	☒	☒	☒	☒
<u>Paul Sales</u>	☒	☒	☒	☒	☒
<u>Box 722</u>	☒	☒	☒	☒	☒
<u>matthew luv 25678</u>	☒	☒	☒	☒	☒
<u>Robert Mining</u>	☒	☒	☒	☒	☒
<u>Box 305</u>	☒	☒	☒	☒	☒
<u>medison, WV 25635</u>	☒	☒	☒	☒	☒
<u>ll</u>	☒	☒	☒	☒	☒
<u>Performance Coal Co.</u>	☒	☒	☒	☒	☒
<u>PO Box 69</u>	☒	☒	☒	☒	☒
<u>Albama WV 25146</u>	☒	☒	☒	☒	☒
<u>PO Box 120 Lewis, WV 26676</u>	☒	☒	☒	☒	☒
<u>MTA, Dist. 4</u>	☒	☒	☒	☒	☒
<u>100 Bluestone Rd.</u>	☒	☒	☒	☒	☒
<u>MT. HOPE WV 25880</u>	☒	☒	☒	☒	☒
<u>Silverton WV 25193</u>	☒	☒	☒	☒	☒

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<i>David R. [Signature]</i>		Ally Engineering		☒			
L. David R. [Signature]		216 Business St.					
Dean Brown [Signature]		Bedley, WV 25801		☒			
Dean Brown [Signature]							
Mark Stowers [Signature]		JOY Bluefield		☒			
Mark Stowers [Signature]							
GARY S. BEGLEY [Signature]		PENNSYLVANIA RESOURCES		☒			
GARY S. BEGLEY [Signature]		CHESAPEAKE, WV					
ANDREW HARRIS [Signature]				☒			
ANDREW HARRIS [Signature]		PO Box 347		☒			
		MT. AIRY					
Chris Hamilton [Signature]		WV Coal Assn		☒			
Chris Hamilton [Signature]							

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<u>Gary C White</u>	<u>International Resources</u>	☒	☐	☒	☒
<u>Greg Eberhardt</u>	<u>Quincy 1940</u> <u>6000 1st St SE</u> <u>Albany, GA 31707</u>	☐	☒	☐	☐
	<u>1342 38th</u> <u>Carroll Creek, WV 25035</u>	☐	☐	☐	☐
<u>Dale Birchfield</u>	<u>Kingston Resources, Inc.</u> <u>P.O. Box 700, Scarbro, WV</u>	☐	☒	☐	☐
<u>Gary Trout</u>	<u>Quincy</u>	☐	☒	☐	☐
<u>Fred Tucker</u>	<u>TRC - Beavers</u>	☐	☐	☐	☐
<u>Ed Chapman</u>	<u>Union</u>	☐	☒	☐	☒

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Please sign on first line Print name under signature	Company and Address	SUBMITTING COMMENT Y N	Written Public Y Y
<u>Richard Grover</u>	<u>U.S. Coal Bd.</u>	☒	☐
<u>Raymond Maynard</u>	<u>APPALACHIAN RIVERS, LLC</u>	☐	☐
<u>Tommy Garber</u>	<u>APPALACHIAN FUELS, LLC</u>	☒	☐
<u>Steve Moore</u>	<u>Matsum Coal</u>	☒	☐
<u>Tom Brant</u>	<u>Beaver Valley Coal</u>	☒	☐
<u>Joan Cole</u>	<u>MSM</u>	☒	☐
<u>Steve Stephens</u>	<u>Nichols Energy</u>	☒	☐
<u>Steve Hatfield</u>			

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 1301 AIRPORT ROAD, BEAVER WEST VIRGINIA
 9:00 A.M.

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	Y	N	Y	Y
Riverbend 300 Patterson Lane Chas. WV	☒	☐	☐	☐
CSE CORP 330 E HARPER FERRY DR HARRISBURG WV 25801	☐	☒	☐	☐
WV Branch of Nat Mine Health Safety He is working in ST, E. Charleston WV	☐	☐	☐	☐
WV DMHST 1615 WARD ST E Chas WV	☐	☒	☐	☐
Hughes Supply Co P.O. Box 55 Way, WV 25801	☐	☐	☐	☐
216 Main Street Beckley WV 25801	☐	☐	☐	☐

Randy Hamford

Don Fawcett

Terry Dickens

Terry Farley

Tom Hughes

Don Fawcett

WV OFFICE OF MINERS HEALTH, SAFETY AND TRAINING

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9:00 A.M.

PROCEEDING CONDUCTED BY: TERRY L. FARLEY, ADMINISTRATOR, WVOMHST

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Company and Address

SUBMITTING
COMMENT

Y N

Written Public

Y Y

James Dean
James Dean
Dobbs Company

WVOMHST
1615 Washington Street East
Charleston, WV
Arch Coal Inc.

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**Comments of Massey Energy Company to the Emergency Rules
Governing Protective Clothing and Equipment Filed on
February 27, 2006 (Title 56 Series II)**

Massey Energy Company is a publicly traded company whose subsidiaries produce nearly 20% of the State's coal production. We are committed to safety. Our operations have historically maintained an NFDL rating far better than the national average. We have developed several initiatives and inventions that have made mining safe not only at Massey Energy, but throughout the industry.

We have made progress by carefully studying issues and developing pragmatic solutions. We fear that the proposed regulations were developed hastily and will not prove to be pragmatic. We will participate in the public hearings on these regulations so that we may better understand and comment upon them.

For now, however, we wish to stress our firm belief that the regulations should be consistent with newly proposed federal regulations. It is imperative that mining regulations be as clear as possible so that those who have to comply with them can understand them. We believe that the currently proposed regulations differ substantially from the framework to be used by MSHA and that this will lead to substantial confusion that will be a detriment to safety.

We also believe that the requirement for the additional SCSR's for the working section people should be increased from 500' to 1000' and be in conjunction with the requirement for the Emergency Shelter.

We appreciate the opportunity to comment in writing on these proposed rules and expect to participate further in the public meetings regarding them.

Massey Energy Company

ARCH COAL, INC.

March 31, 2006

Arch Coal and its subsidiaries are in agreement with the comments submitted by the WV Coal Association in regards to the WV Emergency rules.

Respectfully,

A handwritten signature in black ink, appearing to read "B. S. Keaton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian Keaton, Manager Safety
Mingo Logan Coal Company

**Comments of
Arch Coal, Inc.**

**Submitted to the
West Virginia Office of
Miners Health Safety & Training
March 30, 2006**

**In Response to
Emergency Rules Governing
Protective Clothing and Equipment
Title 56 Series 4**

**Prepared by
Tony Bumbico**

INTRODUCTION

These comments are submitted by Arch Coal, Inc. (Arch). Arch is the second largest coal producer in the United States. Our corporate office is located in St. Louis, Missouri. We have more than 3,500 employees and operate mines in Colorado, Kentucky, Utah, Virginia, West Virginia and Wyoming. Our subsidiary mining companies in West Virginia are Coal-Mac Inc. and the Mingo Logan Coal Company which operates the Ben Creek and Mountain Laurel Complexes.

These comments are in response to the emergency rule covering protective clothing and equipment filed by the West Virginia Office of Miner's Health, Safety and Training (MHST). We are providing this information to share our experience with the Mine Site Technologies (MST) Personal Emergency Device or PED, System. We appreciate the opportunity to comment and hope that our experience will assist MHST in future decisions related to this subject.

PED DEPLOYMENT

PED systems are installed at two of our underground mines, Dugout Canyon and Sufco. Both operations are large longwall mines with excellent safety records. We have not yet installed PED systems at our underground mines in West Virginia.

Dugout is located near Wellington, Utah. It has 223 employees, and is projected to produce roughly 4.5 million tons of coal in 2006. Sufco is located near Salina, Utah. It has 320 employees and is projected to produce 7.5 million tons of coal per year.

The PED system at Sufco was installed in 1998 at a cost of \$169,000. Dugout installed their system in 1999-2000. Both systems were purchased from MST. At both mines, the PED was installed as a secondary communication system, as a back-up to the primary mine pager system. Our

relative success with the PED system at these two operations is best described as mixed.

At Dugout, the PED system was initially deployed on a limited basis. It has since been expanded to the current state, in which approximately 50% of the workforce at Dugout carries a PED cap lamp battery with a PED screen. The system at Dugout has been fairly reliable. There are ongoing issues related to interference with the mine pager phone system that require continual maintenance. Overall, communication coverage has been good up to distances of 5,000-6,000 feet from the underground antenna loop.

Dugout plans to install a Leaky Feeder Radio System this year. They also plan to maintain their PED System until a better alternative is available. In addition, Dugout is reviewing alternative "miner tracking" technologies. We plan to test MST's tracking system, and other similar systems, at Dugout later this year.

Sufco has had less success with the PED system. As a result, they have deployed the PED on a more limited basis. At Sufco, PED units were initially issued to supervisors, electricians, fire bosses, Emergency Medical Technicians, and miners working in out by areas.

The PED system at Sufco has not been reliable. The system interferes continuously with the mine pager phone system and their mine monitoring system. To date, efforts by the manufacturer and Sufco to resolve these problems have not been successful. As a result, Sufco discontinued the use of their PED system when they installed their Leaky Feeder Radio System in 2004.

COMMON ISSUES

Our experience with the PED has identified some common issues. I will offer some brief comments on a few of the more significant problems we have encountered with the PED. I'm sure there are reasonable solutions to some of these issues. Others present more significant technical challenges.

Infrastructure Maintenance

One common PED issue is infrastructure maintenance. As an underground mine advances, you have to continually extend the antenna system. Large

mines like Dugout and Sufco have to install thousands of feet of antenna in order to maintain the loop.

Dugout has installed approximately 45,000 feet, and Sufco has installed approximately 50,000 feet, of underground antenna cable. Failure to maintain this infrastructure results in “dead spots” in coverage. We have encountered “dead spots” at both operations.

This is more than just a maintenance issue. It has potential enforcement implications. We know from experience that periodic “dead spots” will occur. We’re concerned about how MHST and MSHA will treat these incidents from a compliance standpoint.

If regulations required a PED system to be installed at all underground mines:

- Would MHST and MSHA issue violations if we encounter a “dead spot”?
- Would we have to evacuate the mine?

Given the recurring nature of this problem, these are issues that our operations are concerned about. We need more reliable alternatives.

Infrastructure Vulnerability

Another issue related to the PED, as well as other communication or tracking systems, is the vulnerability of the underground infrastructure. As MHST is aware, this hardware is susceptible to damage from explosions, fires, and roof falls. In addition, the explosive atmosphere in a mine following a disaster may render the system inoperable for safety considerations.

In one respect, the PED system is more vulnerable to damage than other underground communication systems. In order for the system to operate, the PED antenna must form a complete loop. It requires twice as much cable as other underground communication systems. As a result, it’s twice as vulnerable to damage from an explosion, fire, or roof fall.

Some have proposed surface loop antennas as the answer to this dilemma. In some cases a surface antenna may work. They are not the universal answer,

however, because at many underground mines the depth of cover can exceed 1,000 feet, or in the case of Dugout or Sufco over 2,000 feet. Many mines would have to deal with surface rights issues, and installation complicated by rugged terrain, to consider installing a surface antenna.

Interference with Other Systems

Our experience indicates that the PED system tends to interfere with other communication systems. This problem has been more significant at Sufco than Dugout. At Dugout, the mine pager phone occasionally experiences a “feedback” noise when the PED is operated. This problem is normally a grounding issue that’s created when the loop antenna comes in contact with the wire mesh used to support the roof and ribs. When this occurs, they have to turn off the PED system after they send a message.

At Sufco, the “feedback” problem has been more persistent. It affects not only their mine pager system, but also the mine monitoring system. We’re not sure what causes the “feedback” problem at Sufco. It may be the result of the PED antenna running near high voltage cables or electrical cables that aren’t shielded. Since we’ve been unable to resolve this issue, the PED system is currently inoperative at Sufco.

Pick-up Trucks

We’ve also experienced problems at both mines using the PED to communicate with employees in pick-up trucks. As you’re aware, the PED system alerts the miner to a problem by causing the cap lamp to flash off-and-on. It also has a secondary alarm that alerts the miner to a message.

At many underground mines, miners travel to/from their work place in pick-up trucks. If a miner leaves his/her cap lamp on in a pick-up truck, it creates a glare that obstructs their vision. To avoid the glare, the cap lamps are turned off while they’re in the truck. Consequently, the miner isn’t aware when the light flashes on/off to alert them to a PED message. Often, the secondary alarm on the PED is not loud enough to be heard over the noise generated by the pick-up truck and other mining equipment. A possible solution to this issue may be a more effective secondary warning system to alert the miner to a PED message.

Seam Height

Seam height is another key factor in the effectiveness of the PED and some other underground communication systems. The seam height at Dugout averages 8-9 feet. At Sufco, it normally exceeds 10 feet. As a result, the PED systems would tend to be more effective at these operations, as opposed to mines with lower coal seams.

System Limitations

The most significant issue we have with the PED is that it's only a one-way system. You can send a message, but you never know whether it's been received by the miner. The PED System represents an improved emergency notification technology, but it's limited. We feel that underground coal miners need and deserve a better emergency communication option.

GENERAL COMMENTS

We feel that MST is a good company with a good product. Their PED system was clearly a major factor in the successful evacuation of the Willow Creek Mine in November 1998. The PED alert sent by the Willow Creek supervisor helped to safely evacuate 45 miners in 45 minutes.

We plan to continue to evaluate the use of the PED system at Dugout and Sufco. In addition, we are evaluating MST's PED and Tracker systems, as well as similar technology designed by other companies, at our West Virginia mines. The estimated price of installing a PED system at our Mountaineer Mine is between \$180,000 (underground loop) and \$195,000 (surface loop). It would cost approximately \$100,000 to install a tracking/tagging system at this operation.

The PED represents an improvement in emergency communication technology. In the final analysis, however, it's not good enough. We need to identify, test, and install better communication and tracking technology. We need technology that can provide:

- Two-way communication with miners underground,
- Precise tracking of the miner's location, and
- Infra-structure capable of surviving a fire or explosion.

We are encouraged by recent research initiated by MSHA in this area. In our opinion, the Agency has identified several new communication technologies with the potential to achieve our objective. Many of these technologies have been used by the military and in other industries. In particular, we are encouraged by the promise of systems such as the:

- Rajant Breadcrumb System
- Time Domain UWB Radar System
- Vital Alert Canary 2-Way Mine Messenger
- Transtek Partnership
- Geosteering TG Miner Tracker
- Nautilus "Buddy" Tracking System
- CEREC Subterranean Wireless Electronic Communication System

CLOSING

Arch supports the on-going efforts of MHST, the Mine Safety Technology Task Force (Task Force), and MSHA in this critically important area. We are also willing to offer our mines as possible test sites for these new, promising communication technologies. We are willing to work with MHST, the Task Force, MSHA, NIOSH, and other interested parties to develop and implement improved emergency communication options for our employees.

However, we want to stress the importance of testing these new technologies in "real life" mine environments. Underground mines come in many shapes and sizes. Geological conditions vary significantly from region to region. Issues such as seam height, depth of cover, and surface terrain, all have an impact on how well this technology will work. What works at one mine, may not work at another.

The final solutions proposed by MHST need to recognize that one-size doesn't fit all. In order to improve emergency communication for our miners, we need a flexible approach that recognizes the unique characteristics of each mine. It's imperative that we identify the "best available" technology, and test it in real mine environments to make sure it's reliable.

We appreciate the opportunity to offer comments.

**Comments of the West Virginia Coal Association to the Emergency Rules
Title 56 Series 2 Governing protective Clothing and Equipment; Public
Hearing March 31, 2006, at the MSHA Academy, Beckley, WV.**

We appreciate the opportunity to comment on the Emergency rules filed on February 27, 2006 and certified by the Secretary of State on February 28, 2006.

The emergency rules are designed to implement the specific provisions of SB 247 adopted by the Legislature on January 23, 2006 establishing requirements for additional SCSRs for underground mining personnel, wireless communications systems and wireless individual tracking devices.

The West Virginia Coal Association is a trade association comprised of coal producing companies that account for approximately 75% of the state's coal production. Our membership also includes land companies, equipment manufacturers, mine supply and service companies.

We remain committed to operating the safest mines in the country and the world and offer the following comments to enhance the overall effect of SB 247 and implementing rules.

Our recommendations are intended to strengthen these requirements while at the same time, safeguard against unintended consequences, unrealistic performance outcomes or unrealized expectations that may result from SB 247 and the emergency rules subject to today's hearing.

We offer three overriding suggestions to serve as guidance to this rulemaking. First, the final rules should be designed based on professional safety considerations and a factual analysis of mine emergency preparedness and evacuation procedures. In this regard, the official investigation findings from Sago and the body of knowledge acquired by an honest evaluation of similar incidents should drive the process and not the views from others that do not have unique expertise in coal mine safety and mine emergency operations. Secondly, the final rule should be "performance" based and not prescriptive in nature. The standard should provide the objective or desired result and allow for compliance flexibility based on local conditions and mine design. Thirdly, the state should immediately establish communications and planning with appropriate MSHA officials to ensure consistency between state and federal requirements. On March 9, 2006, MSHA issued an emergency temporary standard addressing many of the same important topics. To avoid compliance and enforcement difficulties, the state and federal mine safety offices should join together in this important endeavor and provide uniformity within their rules.

Our first specific comment is in response to **Section 56-4-4. Mine Safety Technology Task Force**. We wholeheartedly embrace the creation of this entity

and providing the mine safety professionals with the opportunity to play a significant role in the development of this rule. We believe the task Force has an important role to play in this rulemaking and it affords all aspects of the industry to examine and evaluate first hand many of the new mine technologies proposed for the industry. Their input has already had a major effect on the requirements as evidenced by the significant improvement in the "revised" Emergency Rule over the initial set of emergency rules filed on February 1, 2006. We note the spirit of cooperation existing among task force members in their meetings to date and their quest to deliberate in a thoughtful, constructive and unified manner. All members should be complimented for their professionalism and our appreciation also extends to Interim director Dean for the leadership he has provided the process. We continue to support the Task Force and its important work and anxiously await their final report and recommendations.

Section 56-4-5. Self-Contained Self-Rescue Devices Provided for Escape from Mines.

(5.2) We question whether it is necessary or desirable in all instances to store the cache of additional SCSRs for individuals on working sections within 500 ft. of the face. This area is a production area of the mine and is heavily congested with operating equipment and the immediate and continuous transport of coal. We believe that the section cache should be stored at a more reasonable distance from the face area to better protect the additional units from damage and to better secure their location. Additionally, working sections of an underground mine have historically been an area of concern as it relates to mine ignitions. Consequently, being jammed in the face area may not provide the most accessible location for section personnel to travel or access during an emergency. A more appropriate distance from the face could ease the difficulty in preserving or reaching a storage cache in the event of an emergency. We recommend that this distance requirement be modified to "a distance not to exceed 1000 feet from the section loading point".

Our second comment in regards to **Section 5.2** pertains to the requirement that a cache be provided at active constructive or rehabilitation sites within the mine. We support this requirement but observe that the rule does not contain a definition for either an active constructive or rehabilitation site. We hereby recommend the inclusion of the definition found in MSHA law 75.380:

NOTE: Construction or Rehabilitation Areas are defined as either:

- Each area where mechanized mining equipment is being installed or removed (Similar to 75.380(b)-1) or
- Where miners are intended to work five (5) shifts or more in an area, usually with some equipment such as to secure roof, grade bottom, or install/remove equipment such as belt drives and other installations.

Section 5.2.1. The state rule should recognize the MSHA requirement calling for section storage caches to be located on mantrips. Accordingly, we would suggest that this requirement be clarified to allow the additional SCSRs on mantrips to count as one of the two units required under this provision for section caches.

Additionally, we believe that an argument can be made to have two (2) storage locations on a working section. It would increase the probability of obtaining at least one additional SCSR during an emergency on the section.

Section 5.3.1&2 We recommend that the distance between outby caches be changed to comport with the corresponding provision found in MSHA Emergency Temporary Standard. We cite the following rationale found in MSHA's supporting documents in support of its requirement.

"The location should be determined for each mine based on the travel conditions of the escapeway such as seam height, grade, and any other factor that may impact the time it takes to evacuate along the escapeway. Mine facilities such as overcasts that must be crawled over, doors that must be traversed, etc., can also influence the rate of travel. In addition, the physical condition of the evacuees may impact the locations of the stored SCSRs because heavier, more out-of-shape people consume more oxygen per mile traveled than lighter and fitter individuals. A good rule of thumb for spacing the SCSR storage locations is to observe the distance traveled along the escapeway by some of the more physically challenged miners during a 45 minute interval. This 45 minute time interval accounts for the increased exertion required when using a SCSR (about 15% greater air consumption than bare-faced) and provides about 5 minutes for exchanging SCSRs. A more rigorous method of locating the SCSR storage locations is explained in the publication titled "The Oxygen Cost of a Mine Escape", Kovac, Kravitz and Rehak, MSHA-NIOSH, 1997. This procedure is also specified in the preamble to this ETS."

Section 5.4 Emergency Shelters/Chambers We are prepared as an industry to support the consideration of "Emergency Shelters/Chambers" as an added measure of protection for the underground workforce. We urge the Task Force and Director to exercise caution and careful deliberation of this technology and its appropriateness and application in underground coal mines. There are a number of important issues related to their use in coal mines and importantly, their mere presence underground could create a dilemma in decision making during (pre)emergency preparedness and an emergency situation.

We also question the appropriateness of the current emergency requirement to maintain an Emergency Shelters/Chambers on every working section, not alone within 1000 of the face, where its components would be constantly subjected to damage. In lieu of the existing requirement, we would offer for the task force and director's consideration, a more durable and permanent structure to fulfill this purpose at a centralized point in the mine, outby the working section(s).

This would achieve the shared goal of advocating "escaping" from the mine as the first and only realistic option during an emergency and also offer additional protection from a mine emergency above and beyond existing law..

Section 5.4.6&7. We recommend all reference to requiring or maintaining 16 additional SCSRs for every miner on every working section be removed. This should not be in law or regulation. The thought of a miner trying to navigate out of a mine with 16 SCSRs on his back is something none of us want to see.

SB 247 simply requires rules which provide for additional SCSRs for every miner underground. [See 22A-2-55 (f) (2)] and does not specify the number.

Providing an additional one-hour device along with additional supplies of SCSR caches outby every working section would arguably achieve the requirements envisioned under SB 247. Our recommendations proposed today would expand state requirements well beyond that which is envisioned by corresponding statutory law.

We are concerned from a safety standpoint over storing 16 SCSRs for every person on every working section. This may not always be a safe and viable option. We support the goal of providing underground personnel with additional supplies of SCSRs but would advise that compliance with this provision could lead to rather absurd conclusions and prove to be a detriment to safety!

On an average working section underground during a normal shift change, there may be upwards of twenty (20) individual miners. In addition to the SCSRs required on every individual, the result of section 4.1 would be to mandate 320 additional oxygen canisters to be placed in a single storage area on every section in a coal mine. West Virginia mining law defines "working section" as the area of a mine inby the sections loading point or tailpiece! This area is typically 500 feet or less from the working face!

Frankly, we question the wisdom and certainly the desirability of this requirement. In addition to the dangers associated with having high volumes of pressurized oxygen stored in active mining areas, it promotes a sense of barricading among workers over the universally accepted first and only viable option of "escaping" from the mine during a mine emergency situation.

Working sections of an underground mine have historically been an area of concern as it relates to mine ignitions. Consequently, the immediate working section may not be the best location to store large volumes of oxygen or breathing apparatuses due to the dangers associated and difficulty in either preserving or reaching a storage cache in the event of an emergency.

Thus, we would question the wisdom or reasoning behind the requirement of storing this quantity of oxygen or breathing devices in an area considered to be a likely area where a mine fire or ignition could originate.

56-4-8 & 56-4-9. Communication System and Tracking Devices. We now move to the requirements for the wireless communication system and tracking devices. Our concerns are essentially the same for both technologies (wireless communications systems and individual tracking devices). No one area of SB 247 has received more discussion or debate.

We submit for the record as part of our testimony the "Report of the West Virginia Roundtable on the Challenges and Opportunities for Implementing WV SB 247". The report was prepared by the National Research Center For Coal and Energy at West Virginia University and summarizes a facilitated discussion of these technologies and points out many of the concerns of current systems.

For the record, it should be noted that coal mine operations presently have very elaborate, reliable and effective communication systems today. A problem experienced with the current system is during an emergency situation when mine power is lost and damage to physical structures may be experienced. One of the main challenges presented by the new requirements to have wireless communications and tracking devices is to ensure their operation during a mine emergency. This is a major concern with the proposed systems and represents a significant technological hurdle to overcome.

It should also be said that the mining industry has placed a high importance on improving mine communications over the years in order to enhance mine safety and overall management and efficiencies of mining operations. We are also confident that new emerging technologies and related systems will eventually prove effective in underground coal mining applications, particularly now that the deficiencies of existing systems have been exposed and the science and technical community has been engaged. We look forward to working with all parties to develop new reliable systems.

It is unfortunate that the entire mining community, along with state officials and the Legislature were misled when told unequivocally that certain communications and tracking systems were presently available, work in all underground applications and that the industry has simply chosen not to acquire them.

Similar representations were made to a Congressional Oversight Committee raising the inappropriate expectations of immediate deployment of these technologies throughout the industry.

Not only did these false representations fail to recognize the safety commitment of industry, and its past and current efforts to improve mine communications and

mine safety, they also encouraged the premature and swift-natured legislative action producing SB 247 and regulatory requirements.

Nonetheless, SB 247 requires "a wireless emergency communication device approved by the director and provided by the operator to be worn by each person underground. The wireless device shall, at a minimum, **be capable of receiving emergency communications from the surface at any location throughout the mine.**"

SB 247 further requires "a wireless tracking device approved by the director and provided by the operator to be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, **be capable of providing real-time monitoring of the physical location of each person underground.**

Notwithstanding the misleading testimony to the contrary, we maintain and submit for your consideration, the equipment and technologies necessary to achieve these requirements simply do not exist. The compliance standards of SB 247 are clear and unambiguous, but currently unachievable!

The rules, on the other hand, require the Director to approve such devices when the performance standards contained in the statute are met. We believe this is a prudent measure that affords protection against the premature issuance of approved devices and creation of false confidence.

There are many factors which are believed to influence the effect of these technologies including mine layout and design, the geographical location and the geological conditions of a given mine. The seam height, depth of cover, size, configuration and complexity of a mine also have a direct bearing on their effect. Mine electrical systems, mine machinery, atmospheric monitoring systems may also influence the effect of both systems.

We respectfully submit for your consideration that this is a problem that requires deliberate consideration, objective evaluation and aggressive innovation. The end result should be to have something that works in the mine and that does not establish false confidence. We, as the industry, are committed to an aggressive pursuit of more effective and reliable communications but don't want to be forced to buy "snake oil". We support the Task Force's charge in this area and look forward to working with them to accomplish this goal!

Specifically, the Task Force is charged with immediately commencing a study to determine the commercial availability and functional and operational capability of these communications and tracking technologies and report its findings. It is our understanding, that through a joint effort between MSHA & NIOSH, several promising communication systems are being tested in Northern West Virginia, and we would encourage the Task Force to carefully monitor these field tests.

We also make note of a "legislative appropriation" earmarked for the state to test these systems and would encourage the director and Task Force to join with the Legislature, the Governor's Office of Technology and WVU's Mine Engineering Department to undertake an immediate study of wireless communications and tracking systems in a representative sample of underground mines in this state to establish workable and technically sound criteria for these systems.

Another consideration for the Task Force is to provide better protection for conventional "hard wired" communication systems. Local conditions and local geology could allow for burying the phone wires or they could be placed in conduit or within some other more durable, protective structure. These systems work well and could be improved to provide a more reliable system.

SB 247 also provides that no disciplinary action may be taken against a mine employee based on information recorded from a tracking device. It is inconceivable to the outside world why disciplinary action should not be taken against a miner or mine manager when a tracking device reveals when one travels into a "dangered-off" area of the mine or otherwise places himself or others in harms way. We recommend this be rectified by the Task Force and the director by incorporating a provision within the rule to address this concern.

SB 247 & the initial set of emergency rules filed on February 1 were fraught with a myriad of technical, compliance, enforcement and operational complexities. They are indicative of requirements constructed in haste without technical and professional expertise. We are encouraged that the administration is prepared to listen to mine safety experts in finalizing these important standards.

The comments contained herein are consistent with the provisions of SB 247.

As in industry, we remain committed to operating the safest mines in the country and world and pledge our full support to the director and Task Force towards achieving our shared goals.

We appreciate the opportunity to comment on these rules

West Virginia Department of Miners Health Safety and Training
Public Hearing
Emergency Rules Implementing SB 247
US Mine Academy
March 31, 2006

INTRODUCTION

- I am Gary G. White, President and CEO of International Industries, Inc. (III) III is an employee owned company engaged in mining, manufacturing and lumber production with operations in five states. III was founded in 1947 by our Chairman, James H. "Buck" Harless
- My career in West Virginia's mining industry spans more than thirty-five years, having entered the industry as a certified electrician and electrician instructor and advancing through various management positions to my current responsibilities as CEO of III. During that time, I served as President of the West Virginia Coal Association for more than seven years. . I am here today on behalf of our employee owners and their families. More specifically, I am here representing more than 300 employees and their families of our mining division, International Resources.
- International Resources, consists of five underground mines, a surface mine, a coal preparation plant and related rail loading facilities located in Mingo and Logan Counties in Southern West Virginia. Our underground mines are mining the Lower Cedar Grove, 2 Gas and Alma seams with seam heights ranging from approximately, 27 inches to 42 inches. Four of our five mines are mining in seam heights of 36 inches or less. While my comments today are more specific to our mining operations, I am confident they likewise reflect the concerns of all "low coal" mining operations in the state.
- Ironically and importantly, the majority of the "low coal" mining production is concentrated in the most economically disadvantaged regions of our state. Therefore, any potentially adverse impacts of SB 247 and the corresponding Emergency Rules will have a disproportionate effect on the regions of the state that can least afford the economic and employment consequences.

- Over the years, I have participated in numerous legislative and regulatory processes through which new mining laws and regulations have been developed. During these processes, there has been a tendency to create legislation and regulation of our industry with the assumption that all mines are fundamentally the same. While the quality and markets for the coal may be different, the seam heights and mining conditions are relatively the same. i.e. Seam heights in excess of four feet. Historically, as is the case today, the “low coal” segment of the industry has to constantly remind the legislative and regulatory communities that what works well in a seam in excess of four feet may not work at all in “low coal” seams or at least may need to be altered to be workable in these seams.
- The International Resources family of mining operations fully endorse and incorporate by reference the comments submitted by the West Virginia Coal Association of which we are a member. Therefore, my comments are intended to compliment the Association’s by bringing to your attention the areas of concern for “low coal” operations.

COMMENTS

- Like the Association, my comments are intended to assist in the improvement of the Rules and avoid unintended and undesirable consequences. Likewise, we strongly believe that the “Results Oriented” approach is much more practical than the prescriptive approach to the implementation of this very important safety legislation. The “Results Oriented” approach also provides the flexibility needed to accommodate seam height, mining conditions, etc. that are essential considerations for the development and implementation of practical and effective safety laws and regulations.
- We are very concerned about the apparent lack of coordination between the West Virginia Division of Miners Health, Safety and Training and MSHA as they appear to be developing distinctly different approaches to accomplish the common objective. The industry does not need another round of conflicting laws and regulations that only serve to confuse and contradict the process of improving the safety of our underground mines. It is very difficult to serve two masters.
- We are concerned that the prescriptive nature of the Emergency Rules tends to focus more on the concept of barricading rather than the industry standard of escape. Historically, we have trained our miners to escape leaving barricading as the last resort for survival.
- We are very concerned about the requirement for multiple SCSR’s (as many as 16 per miner underground) to be stored in prescribed locations on the working sections, outby areas of construction and maintenance work and at prescribed distances along the designated escapeways. While we believe these requirements are impractical and excessive for the entire industry, they are particularly so in “low coal” mines. Further we would question the physical and medical impact of the use of the SCSR for extended periods of time. We are not aware of any definitive research or testing of these devices to determine the impact of their long term (in excess of two hours) use. We believe such research is essential to avoid

a potential false sense of security that may create unintended adverse consequences and strongly recommend that it be conducted immediately. Further, we reiterate our previous comment that a Performance Based approach is a much more effective and practical way to achieve the objectives of the law and rules on a mine-by-mine basis.

- While we support the concept of providing “Emergency Shelters/Chambers”, we have serious concerns about the implications of this potential requirement in “low coal” mines. We submit the concept of “Portable or Mobile” Shelters and/or Chambers is totally unworkable and impractical for “low coal” mines. Once again, we encourage the Department and the Task Force to use a “Results Based” as opposed to a prescriptive approach to accomplish this objective. Clearly, this is an area where maximum flexibility is dictated by the varied seam heights, mining conditions and other considerations.
- We are very concerned about the requirement for “wireless” communication and tracking devices that are capable of “receiving emergency communication from the surface to any location throughout the mine and capable of providing real-time monitoring of the physical location of each person underground” respectively. Unfortunately, the industry and the public at large have been lead to believe that this “wireless” technology required by SB247 currently exists and is readily available. That simply is not the case. While there is at least one of each of these systems being used in Australia and have likewise been tested in a few mines in the US, they do not, currently meet the “wireless” standard required by the legislation. More importantly to us, we have found no evidence that any of these devices or systems have been used or tested in “low coal” mines anywhere. We submit that while the ability to send and receive radio transmissions “wirelessly” in underground mines is a significant challenge in coal seams greater than four-feet high, the challenge increases exponentially in “low coal” seams. Wireless communication relies on the ability of the system to radiate its signal from the transmitter to the receiver. Obviously, “low coal” seams significantly limit the amount of open space available for such radiation. We frankly have little confidence that any of the current technology will even work at all in “low coal”

much less meet the requirements of the law. Likewise, we would also point out that, to the extent these systems have worked at all in US mines, they require a network of "hard wires" and in most cases repeaters underground to transport the signal in very close proximity (in the case of communications, less than 1000 feet and in the case of tracking less than 150 feet) to the individual receiver.

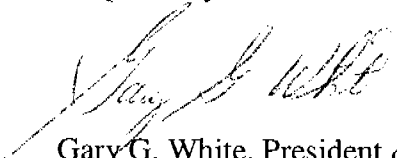
Historically, the typical underground mine explosion, fire, etc. has rendered communications systems useless by virtue of the fact that the event severs, if not destroys, the "hard wired" component of the system. Therefore, if these, so called, wireless systems, in fact, require a "hard wired" component to deliver their signal to points in close proximity to the receivers, arguably, these systems would likewise be destroyed by such an event.

- While we fully endorse and encourage the research and development necessary to find or create technology that will meet the requirements of the law, we believe even the current accelerated approach will take significant time to perfect a system that will comply with the law. In the interim, we believe there is a simple approach to temporarily but reliably achieve the same objective, increase the number and routings of underground circuits for our existing mine communication systems. The current technology has been reliable for many years and significantly improved over the past twenty years. Once again, the weak link in a disaster is the "hard wired" component of the system. Obviously, redundancy of this component of the current system will significantly improve its reliability in an emergency situation.

CLOSING

On behalf of the International Industries Employee Owners and their families and the "low coal" mining community of West Virginia, I appreciate the opportunity to share our concerns, observations and suggestions with you today. We applaud Governor Manchin, Director Dean, the Task Force and all the others who have worked tirelessly to improve the safety and welfare of our state's coal miners. Our comments today were intended to be constructive not critical. We firmly believe that, as has been the case historically, the mining community will rise to the occasion of further improving the safety and welfare of our state's miners and West Virginia will continue to lead the nation with innovative and creative approaches to solve the current challenges facing our industry. The International Industries family of companies wants to be an active participant in that process. Thank you again for the opportunity to do so.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary G. White", is written over a horizontal line.

Gary G. White, President & CEO
International Industries, Inc.
P.O. Box 1210
Gilbert, WV 25621

BrooksRun

MINING COMPANY

208 Business Street
Beckley, WV 25801

Brooks Run Mining Company, LLC would like to offer the following comments concerning the Title 56 Series 4 Emergency Rule that was implemented as the result of mining accidents that occurred in the calendar year 2006. We thank you for this opportunity.

Regarding the requirement in 56-4-7 for the placement of a strobe light on storage caches, the placement of this strobe will serve no logical benefit. Miners will not work or travel near this strobe, except during weekly escapeway exams, and it provides no benefit. Other requirements in the proposed rule, such as the requirement that a physical lifeline to be attached to each storage cache, would be far more effective means of physically locating the cache during an emergency exit from the mine under any conditions. In the event that there is an inundation of explosive gasses in the underground mine environment, a strobe light could become a potential source of ignition, even though the proposed rule presumes it to be intrinsically safe. The perpetual maintenance that would be required just to keep a strobe light operative, even though the device will in no way enhance coal mine safety, should eliminate this requirement from the proposed rule. The lifeline and reflective signs are appropriate, can be maintained long term, and will provide all of the assistance each miner may need in the location of self contained self rescuer storage caches.

Regarding the wireless communication devices required under 56-4-8, even though this technology is important to all miners, it simply does not exist at this time. Requiring mine operators to purchase and install these devices, when they are neither proven nor reliable and when they are not capable of two-way communication, will divert resources, time and attention away from the research and development that is needed for the telecommunications industry to develop and bring to market a two-way wireless communication system that would be safe, reliable and effective for underground use. West Virginia will be behind the entire nation in communication systems due to the enormous cash outlay required, if the proposed rule requires the purchase of an unreliable one-way system. A Stay should be implemented until a safe, reliable and effective two-way communication system is available. This will benefit everyone, and enhance the safety of all coal miners.

Regarding the tracking devices required under 54-4-9, again there is no tracking device that has been proven safe, reliable and effective in an underground mine environment yet. The technology has not even been tested in thinner seams. Once such a system has been developed and brought to market, it will become an

invaluable tool for location of missing miners in a real time emergency situation. Until then, a Stay should be implemented on this portion of the proposed rule. Once again, requiring premature purchase of a system which is touted as working, but which has not actually been tested or proven, will leave West Virginia behind the rest of the nation, because other states and MSHA are taking a more scientific approach to this issue and ensuring that the desired technology is safe, reliable and effective prior to implementing a rule requiring mine operators to use a device underground.

Regarding the storage increments of Self Contained Self Rescuers as required by 56-4-4, we agree with the fundamental principle that additional storage caches of SCSR's would be beneficial underground, to aid escape in the event of an emergency. However, we strongly disagree with the provisions of Section 4.2.1, which require 16 additional rescuers on each working section for each individual miner. This is over 1 ton of rescuers and clearly sends the wrong message concerning escape, which is the preferred alternative being taught, recommended, and encouraged by all agencies and industry personnel involved in underground mine safety. This number of rescuers, upwards of 350 on some sections, will create fire hazards, voluminous record keeping, and other associated problems of storage and examinations that are all unnecessary. We believe that the two rescuers per miner approach is a more reasonable solution to the problem. Additionally, the outby storage caches that are required under Section 5.3.1 at 30 minute travel increments should be consistent with MSHA emergency proposed standards, which allow 45 minute travel increments. Inconsistencies between the state and federal agencies only adds to confusion and chaos in the event of a real time emergency for the miner.

Thank you for your consideration of our comments.

Ken Pedder
3/2/06

RESPONSE TO WRITTEN AND ORAL COMMENTS

TITLE 56 – SERIES 4

The following is an attempt to respond to written and oral comments received during the public hearing conducted on March 31, 2006 at the MSHA National Mine Health and Safety Academy located in Beckley, WV. The public hearing was conducted to allow interested persons to comment on Emergency Regulations Governing Protective Clothing and Equipment, Title 56, Series 4, filed on February 27, 2006 and effective on February 28, 2006.

Under 56-4-5.2 – At least one person commented that the requirement of this section that storage caches be maintained within 500 feet of the closest working face be extended to 1000 feet. While there may be isolated instances where the 500 feet requirement may pose a problem, there is not sufficient reason to change the requirement. Isolated instances where the 500 feet requirement poses some type of problem can be dealt with on a case by case basis. Language was added to Section 5.2 to address the concerns from the comments.

Under 56-4-5.2 – A commenter points out that the requirements contain no definition of “construction and rehabilitation sites”, and suggests that an MSHA definition that defines such sites as those where construction and rehabilitation work will be ongoing for at least five days be added. Such a suggestion would effectively eliminate the protection provided for persons working at such sites for less than five days and can not be considered.

Under 56-4- 5.2.1- A commenter proposes that the state rule should recognize the MSHA requirement calling for section storage caches to be located on mantrips. The commenter also suggests that the requirement be clarified to allow one of the additional SCSR’s stored on mantrips to count as one of the two units required to be stored in section caches. The response in this case is that mantrips are frequently removed from sections for various reasons which would result in the required number of SCSR’s not provided within 500 feet of the closest working face. Additionally, the commenter suggests that it may be best to have two storage locations on a section as opposed to one. We believe that this idea may have some merit and may be able to address the concern through individual mine plan approval.

Under 56-4-5.3.1&2- The commenter suggests that the distance between outby caches be changed to comport with the corresponding provision found in the MSHA Emergency Temporary Standard. This standard calls for a maximum 45 minute travel time between caches as opposed to the state requirement of 30 minutes. Given the information received and studied by the Technology Task Force pertaining to the duration that SCSR's can be expected to last this proposal can not be considered.

Under 56-4-5.4 - The commenter proposes that emergency shelters/chambers are not necessary on all working sections, and could be placed at centralized locations in outby areas. We believe this proposal would weaken the overall level of protection provided by the emergency regulations and therefore disagree.

Under 56-4-5.4.6&7 – The commenter recommends that all reference to requiring or maintaining 16 additional SCSR's for every miner on every working section be removed. The commenter cites such a storage location as a potential fire hazard in addition to other logistical problems. We are in hopes that the ultimate approval for use of rescue shelters/chambers shelters will alleviate this concern.

Under 56-4-8 and 56-4-9 – SB 247 required “a wireless emergency communication device capable of receiving emergency communications from the surface at any location throughout the mine” and “a wireless tracking device” with the same capabilities. The commenter maintains and submits that the equipment and technologies necessary to achieve compliance with these requirement simply do not exist. While perfect solutions which would work in all applications have yet to surface we are in hopes that the efforts of the Technology Task Force, MSHA and the OMHST will eventually provide a viable solution. Given sufficient time, we hope that those working on the problem will weed out the “snake oil” salespeople.



State of West Virginia
Joe Manchin III, Governor

WV Office Of Miners' Health, Safety & Training
James M. Dean, Acting Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

February 28, 2006

Priscilla Mitchem
National Mine Health and Safety Academy
1301 Airport Road
Beaver, West Virginia 25813

Dear Ms. Mitchem:

Per our telephone conversation the WV Office of Miners' Health, Safety and Training would like to reserve the mine academy's auditorium from 8:00 a.m. - 4:00 p.m. on Friday, March 31, 2006.

A public hearing on the Emergency Rules Governing Protective Clothing and Equipment that were filed as a result of the Sago and Aracoma mine accidents is the purpose for reserving your facility.

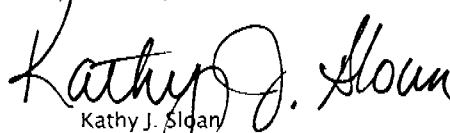
We will need the following equipment:

- Podium with Microphone for Person Conducting Proceedings
- Podium with Microphone and Podium for Public Comments for audience
- Computer Laptop with Projector for PowerPoint presentation

I would like to request five (5) lodging rooms for the night of Thursday, March 30, 2006. I may need additional meal cards for those not requiring overnight accommodations. I will advise you at a later date if that is necessary.

Any costs associated with these event are covered by the WV State Grants Program. Again, thank you for your assistance and if you have questions or need additional information please call me at 304 558-1425.

Sincerely,


Kathy J. Sloan
Administrative Secretary

TUCKER COUNTY SOLID WASTE AUTHORITY

Post Office Box 445
Davis, West Virginia 26260

June 23, 2006

Mr. Richard P. Cooke

Page 2

4.3.f. - Comments (suggested wording):

There is too much detail in 4.3.f. Suggest the following one sentence is complete in and of itself.

4.3.f. Equipment selection, maintenance, servicing and repair including, but not limited to, appropriate for job application, local availability of parts/service and back-up equipment, and preventative maintenance program.

54-6-5 Performance Review Categories

...Based upon the final performance review the solid waste authority and its commercial solid waste facility shall be placed in one of the following categories:...

54-6-5 Comments (suggested wording):

Rather than having one overall rating for an authority/landfill, we suggest ratings be done in each category that has been reviewed: Financial, Managerial, Operation, Compliance, etc. Each category should be rated separately.

Thank you for the opportunity to present my comments regarding proposed Rule 54 CSR 06.

Sincerely,



Allen F. Ellison
Landfill Manager



west virginia department of environmental protection

Executive Office
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0440
Fax: (304) 926-0446

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

December 8, 2006

The Honorable Betty Ireland
WV Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd, East
Charleston, West Virginia 25305-0770

FILED
2006 DEC 11 AM 10:06
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Re: Unauthorized Legislative Rule 54CSR6

Dear Secretary Ireland:

Please allow this letter to serve as my official request to have the West Virginia Solid Waste Management Board's proposed legislative rule Series 54CSR6 withdrawn because I have not authorized nor consented to the proposed rule as required by W.Va. Code §5F-2-2(13) and §29A-3-11(a). The Solid Waste Management Board (SWMB) is administered by the West Virginia Department of Environmental Protection. DEP's General Counsel, Heather Connolly, contacted your office and was informed that the rule, signed by board chairman Mallie Combs-Snider, was mistakenly accepted by your staff as an authorized signature during the rush of the last filing day. The SWMB was made aware of my refusal to grant consent for this proposed rule in May of this year.

Please feel free to contact me if you should have any questions on this matter.

Sincerely,

Stephanie R. Timmermeyer
Cabinet Secretary

cc: Chief Counsel, Joe Altizer, House Judiciary
Chairman Combs-Snider, SWMB
Director Richard Cooke, SWMB



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland

Secretary of State

December 15, 2006

The Hon. Stephanie R. Timmermeyer
Cabinet Secretary
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Dear Secretary Timmermeyer:

Secretary Ireland has asked me to respond to your letter to her of December 8, 2006, regarding proposed Legislative Rule 54CSR6. After careful review of West Virginia Code §§5F-2-1(f) and 5F-2-1(o), this office believes the Solid Waste Management Board has the responsibility to file or withdraw this rule.

Thank you for your understanding.

Sincerely,

Judy Cooper, Manager
Administrative Law Division

Cc: The Hon. Betty Ireland
Daniel Kimble, Esq.
Carte Goodwin, Esq.
Joe Altizer, Esq.
Richard P. Cooke

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

AMENDMENTS TO PROPOSED RULE AS A RESULT OF COMMENTS
RECEIVED AND PUBLIC HEARING AND REASONS FOR ADMENDMENTS TO
PROPOSED RULE

TITLE 56 SERIES 4
RULES GOVERNING PROTECTIVE CLOTHING AND EQUIPMENT

Under 56-4-5.2 – At least one person commented that the requirement of this section that storage caches be maintained within 500 feet of the closest working face be extended to 1000 feet. While there may be isolated instances where the 500 feet requirement may pose a problem, there is not sufficient reason to the change the requirement. Isolated instances where the 500 feet requirement poses some type of problem can be dealt with on a case by case basis.

To address this concern: Language was added to Section 5.2.

Note: Additional modifications to the rule will be required after the Task Force completes their findings and written report to the Director as specified in Section 4.1. The time line the Task Force had to complete their findings and make its recommendations exceeded that of the time line of the filing requirements of the rule.