

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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Filing Date

FILED
1991 OCT 31 11:10:27
OFFICE OF THE SECRETARY OF STATE

Form #7

Effective Date

Oct. 31, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: Miners' Health, Safety and Training TITLE NUMBER: 38

CITE AUTHORITY: 122A-7-8

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 22

TITLE OF RULE BEING FILED AS AN EMERGENCY: Rules and Regulations Governing the Standards for Mine Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Due to the lack of specific State guidelines pertaining to mine rescue stations, much of the equipment used in rescue operations are not being maintained for readiness. This proposed regulation will establish those standards and bring us into compliance with CFR 30 Part 49.

The Code of West Virginia requires that only those mines employing 50 or more to provide coverage at their mine. With increased automation in the mining industry, this means that only 20% of the active mines in West Virginia are required to have coverage.

With fatalities on the rise, we must be prepared to respond if an emergency occurs.

Use Additional Sheets If Necessary.

Stephen J. Webber
Signature

4.40

FILED

1991 OCT 31 AM 10:26

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: October 31, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Miners' Health, Safety and Training

EMERGENCY RULE TITLE: Rules and Regulations Governing the Standards for Mine
Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

1. Date of filing: October 31, 1991
2. Statutory authority for promulgating the emergency rule:
§22A-7-8
3. Date of filing of proposed legislative rule: Oct. 31, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
This emergency rule will adopt new language
5. Has the same or similar emergency rule previously been filed and expired?
NO
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
Mine rescue stations are not being maintained at a state of readiness.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

No time limit has been established, but this regulation will bring us into

compliance with CFR 30 Part 49. This program is funded 100% by MSHA.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Due to the lack of maintenance, many rescue teams would not be able to respond

to a mine emergency. This regulation will establish standards for mine rescue

stations that will allow us to insure readiness should an emergency occur.

At this time, only those mines employing 50 or more are required to provide

mine rescue coverage at their mine. With increased automation in the mining industry, only 20% of the active mines in West Virginia are required to have coverage; 80% of the active mines employ 49 or less, and by State law, are not required to have mine rescue coverage.

With fatalities on the rise, we must be prepared to respond if an emergency occurs.

MINERS' HEALTH, SAFETY AND TRAINING

TITLE 38, SERIES 22

TITLE: RULES AND REGULATIONS GOVERNING THE STANDARDS FOR MINE RESCUE
STATIONS, RESCUE PROGRAMS, AND MANDATORY COVERAGE FOR ALL UNDERGROUND
MINES

LEGISLATIVE RULES
DIVISION OF HEALTH, SAFETY & TRAINING
TITLE 38 SERIES 22

38-22-1 General.

1.1 Scope. This legislative rule establishes standards for mine rescue stations, rescue programs, and mandatory coverage for all underground mines.

1.2 Filing Authority. 22A-7-8

1.3 Filing Date. October 31, 1991

1.4 Effective Date.

38-22-2. Definitions.

2.1 All terms used in this regulation, not defined herein, shall have the meanings set forth in Chapter 22A, Article 1A, Section 1 of the West Virginia Code.

38-22-3. Availability of Mine Rescue Teams.

3.1 It shall be the responsibility of the operator to provide mine rescue coverage at each active underground mine.

3.2 Mine rescue coverage may be provided by:

(A) Establishing and maintaining a certified mine rescue station with at least two (2) teams for rescue and recovery work; or

(B) Entering into an arrangement for mine rescue coverage with a certified company, independent or state-operated mine rescue station with at least two (2) teams for rescue and recovery work.

3.3 Mine rescue teams participating in mine rescue contests or providing emergency services to another mine shall be considered available.

3.4 In the event of a fire, explosion or recovery work in or about any mine, the Director is authorized to call and assign any rescue team for the protection of lives and the preservation of property. To insure a proper response time, the Director shall notify in advance the station that will provide the primary coverage in the event of an emergency.

3.5 To ensure adequate coverage for all underground mines, no mine rescue station may provide coverage to more than thirty-five (35) mines within the two (2) hour ground travel limit as defined in 4.2 of this regulation.

38-22-4. Mine Rescue Teams.

4.1 Each mine rescue team shall consist of five (5) members and one (1) alternate who are qualified, trained, and equipped for emergency mine rescue service. One team member must be certified by the state as a mine rescue instructor.

4.2 To qualify for membership on a mine rescue team, an applicant shall be not more than fifty (50) years of age and shall pass on an annual basis a physical examination by a licensed physician. Qualifying members must be employed at an underground mine with a minimum of one (1) year of active underground mining experience; and must work in the general area of the station so that the travel time from the team members' home or work, and the travel time from the station to the mine emergency, shall not exceed a two (2) hour ground travel limit.

4.3 Each member of a mine rescue team shall devote at least four (4) hours each month or eight (8) hours every two (2) months for training purposes, and shall be available at all times to assist in mine rescue and recovery work during mine emergencies.

4.4 When engaged in emergency rescue and/or recovery operations at a mine, all rescue team members assigned to rescue operations during the period of their rescue work shall be employees of the operator at the mine where the emergency exists and shall be compensated by the operator at the prevailing wage rate for the most skilled class of inside mine labor. Such team members shall also be protected by the operator's worker's compensation subscription.

4.5 One six-member team shall be stationed at the mine portal or fresh air base as back-up for each team performing rescue and/or recovery work in a hazardous atmosphere or in by the fresh air base.

4.6 All rescue and recovery teams performing recovery work shall be under the jurisdiction of the division and guided by the auxiliary equipment and mine rescue apparatus manual.

38-22-5. Mine Rescue Stations.

5.1 Criteria - Certified mine rescue stations must be provided with the following minimum standards:

(A) Twelve (12) MSHA approved, self-contained breathing apparatuses, each with a two-hour minimum capacity, and all necessary equipment used for testing such apparatuses;

(B) A portable supply of oxygen or chemicals that will sustain each apparatus for six (6) hours during rescue and recovery operations;

(C) One (1) extra bottle (fully charged) for each self-contained compressed oxygen breathing apparatuses;

(D) One (1) oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(E) Twelve (12) permissible cap lamps and charges for same;

(F) Two (2) gas detectors for each type of gas which may be encountered at the mines served by the station;

(G) One two-way communications and lifeline, or its equivalent, at least one thousand (1,000) feet in length;

(H) All necessary spare parts and tools for repairing the breathing apparatus and communications system as prescribed by the manufacturer;

(I) All mine rescue equipment required by this section must be stored at one location. The Division of Energy recognizes that in certain circumstances, adequate coverage may be provided through different storage arrangements. Storage of mine rescue equipment at more than one (1) location may only be adopted through a petition to the Director of the Health, Safety and Training section of the Division of Energy.

38-22-6. Equipment and Maintenance.

6.1 Mine rescue apparatuses and equipment shall be maintained for readiness as prescribed by the manufacturer. Each apparatus shall be inspected by a qualified person at intervals that coincide with the training provisions in 4.3 of this regulation. A record of tests and inspections shall be kept at the mine rescue station.

6.2 Authorized representatives of the Commissioner shall have the right of entry to inspect any designated mine rescue station.

6.3 If, upon inspection of a mine rescue station, an authorized representative of the Commissioner finds the equipment not in compliance with the manufacturer's specifications, said representative shall determine that a danger exists and shall issue a Notice of Violation requiring the operator of the station to bring all substandard equipment and outdated parts to acceptable standards.

6.4 If, after the abatement period, the necessary parts or equipment are not available but have been ordered, an extension may be issued. If no action has been taken to abate said notices, an order may be issued.

6.5 Companies affiliated with a station issued an order will be notified of that order and that their mine rescue program is invalid. Companies affiliated with that station will have twenty-four (24) hours to submit a revised mine rescue program.

38-22-7. Mine Rescue Programs.

7.1 Every operator of an underground mine shall develop and adopt a mine rescue program that must be submitted within thirty (30) days of the effective date of this regulation. A new program need only be submitted when conditions exist as defined in 6.5 of this regulation, or when information contained within the program has changed due to circumstances.

7.2 A copy of the approved mine rescue program must be posted at the mine and kept on file at the company's mine rescue station or rescue station affiliate and with the state safety instructor in the regional office where the responding team is located.

38-22-8. General Information Required in Mine Rescue Programs.

8.1 A mine rescue program shall include the following information:

- (A) Name, address, and phone number of the company.
- (B) Name, address, and phone number of the mine.
- (C) Names, addresses, and phone numbers of responsible company officials.
- (D) Names, addresses, and phone numbers of mine rescue team or affiliate personnel providing the coverage, including travel time from the team members home and work to the mine rescue station and from the mine rescue station to the mine.
- (E) Name and thickness of coal seam.
- (F) Total number employed by the operator.
- (G) Number of miners employed on each shift.

(H) Copies of all waivers.

(I) Names, addresses and phone numbers of the two
(2) state mine rescue stations located closest to the mine.

8.2 The Director may require additional information if warranted by conditions at the mine.

8.3 The operator shall immediately notify the Director of any changed conditions materially affecting the information submitted in the mine rescue program.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

October 31, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

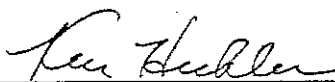
AGENCY: Miners' Health, Safety and Training

RULE: New Rule, Series 22, Rules and Regulations Governing the Standards for Mine Rescue Stations, Rescue Program, and Mandatory Coverage for all Underground Mines

DATE FILED AS AN EMERGENCY RULE: October 31, 1991

DECISION NO. 100-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Oct. 31, 1991
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 100-91)

AGENCY: Miners' Health, Safety and Training
RULE: New Rule, Series 22, Rules and Regulations
Governing the Standards for Mine Rescue Stations,
Rescue Programs, and Mandatory Coverage for All
Underground Mines

FILED AS AN EMERGENCY RULE: October 31, 1991

- par. 1 The Miners' Health, Safety and Training has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Miners' Health, Safety and Training filed this emergency rule with supporting documents with the Secretary of State October 31, 1991 and with the LRMRC October 31, 1991.

par. 7 It is the determination of the Secretary of State that the Miners' Health, Safety and Training has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §22A-7-8 reads in part:

The director shall have the power and authority to propose and promulgate rules and regulations to organize this office and to carry out and implement the provisions of this article... relating to health and safety inspections and enforcement.

par. 9 It is the determination of the Secretary of State that the Miners' Health, Safety and Training has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Miners' Health, Safety and Training are as follows:

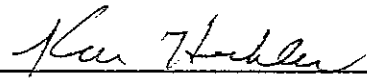
Due to the lack of specific State guidelines pertaining to mine rescue stations, much of the equipment used in rescue operations are not being maintained for readiness. This proposed regulation will establish those standards and bring us into compliance with CFR 30 Part 49.

The Code of West Virginia requires that only those mines employing 50 or more to provide coverage of their mine. With increased automation in the mining industry, this means that only 20% of the active mines in West Virginia are required to have coverage.

With fatalities on the rise, we must be prepared to respond if an emergency occurs.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare.

par. 14 This decision shall be cited as Emergency Rule Decision 100-91 or ERD 100-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Miners' Health, Safety and Training, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Oct. 31, 1991
ADMINISTRATIVE LAW DIVISION

Entered _____

S U M M A R Y

This proposed rule will establish standards for mine rescue stations and make coverage mandatory for all underground mines, regardless of employment. It will also specify the number of mines that can be covered by a station, define the general area of the mine, and require a mine rescue program to be established before an emergency can occur.

FILED
1991 OCT 31 AM 10:25
OFFICE OF THE SECRETARY OF STATE

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 OCT 31 AM 10:26

Rule Title: Rules and Regulations Governing the Standards for Mine Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

OFFICE OF WEST VIRGINIA
STATE

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East, Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost IF RULE IS NOT APPROVED	\$ 100,000	\$	\$ 100,000	\$ 100,000	\$ 100,000
Personal Services					
Current Expense					
Repairs & Alterations	90,000		90,000	90,000	90,000
Equipment	10,000		10,000	10,000	10,000
Other					

2. Explanation of above estimates:

The Miners' Health, Safety and Training Section has used Federal funding for the purchase and maintenance of mine rescue equipment, with MSHA's approval. MSHA has now directed this Federal money to training. Therefore, equipment purchases and maintenance will require State General Revenue funds if this rule is not approved.

3. Objectives of these rules:

This regulation will establish standards for mine rescue stations, rescue programs, and mandatory coverage for all mines. It will also provide a means for each station to generate the funds necessary to maintain the equipment as prescribed by the manufacturer. Without mandatory coverage most mines will not voluntarily pay for coverage. Since this service is directly provided to their mine, they should be responsible for any expenditures incurred for the operation and maintenance of the station.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Should this regulation not be approved, the cost to the Miners Health, Safety, and Training Section will be approximately 100,000 per year to properly maintain the mine rescue stations.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

This regulation will have little or no economic impact of the mining industry. Coverage fees should run approxiamtely \$1,000 dollars per year, a small amount considering complete mine rescue station cost approximately \$200,000 dollars each.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: October 31, 1991

Signature of Agency Head or Authorized Representative

Stephen F. Webber

Please find attached copies of correspondence and the approved contract that will allow mine rescue associations to take possession of State owned equipment. This contract will allow each association a means to generate the funds necessary to maintain their station.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

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SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION

Agency Mine Health Safety & Training
Rule Title Mine Rescue Stations
Date Oct. 31, 1991
Number 38 CSR22

Authority 22A-7-8
30 CFR Part 49
Existence of Emergency OK

Immediate preservation of public peace, health, safety
or welfare

Time limitation

Prevent substantial harm to public interest

Proper Procedure OK

Robert E. Wilkinson



STATE OF WEST VIRGINIA
DIVISION OF ENERGY
DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES
1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE: 348-3600

GASTON CAPERTON
GOVERNOR

October 29, 1991

E. W. "WOODY" WAYLAND
COMMISSIONER

The Honorable Ken Hechler
Secretary of State
Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Hechler:

I have reviewed the attached regulations, Title 38, Series 22 - "Mine Rescue Programs and Mandatory Coverage for all Underground Mines" and request they be filed with the Secretary of State's Office.

If you have any further questions, please let me know.

Sincerely,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cc

Attachment

FILED
1991 OCT 31 AM 10:25
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

OFFICE OF THE SECRETARY OF STATE:

The Division of Miners Health, Safety and Training has been reviewing the mine rescue language now used in the Code of West Virginia (Code). Not only are there deficiencies in the language of the Code, but this Division is not in compliance with federal standards.

It has come to the attention of this Division that many companies have not maintained the equipment at their rescue stations at a level which would assure readiness should an emergency occur. The fact that the equipment is in place does not ensure proper function. This regulation will define station standards and require mine rescue coverage for all underground mines. The Code states that only those mines employing 50 or more shall "have available for mine rescue work a trained mine rescue team". Those mines employing 49 or less need not provide coverage for their employees. Approximately 80% of the active mines in West Virginia now fall into this "49 or less" category. This is in direct conflict with the Code of Federal Regulations, Part 49 (CFR-49).

As for regular maintenance of equipment, the manufacturers have spent large sums of money in research and development on the breathing apparatuses and back-up equipment used in mine rescue stations throughout this state. They have established specific guidelines and have placed "life expectancies" on certain parts in order to avoid mechanical failure. This Division feels that the manufacturer's maintenance schedule must be followed if an apparatus is to be deemed ready for use.

We have also defined the two hour ground travel time limit in CFR-49 to read "the travel time from the team member's home or work, and the travel time from the station to the mine emergency shall not exceed a two hour ground travel limit". For example, Marrowbone Development Company maintains a mine rescue station on their property at Naugatuck, West Virginia. Due to the time taken by their team members to report to the station, which was located on the same property as the mine, Wolf Creek Collieries teams from Kentucky responded quicker to this accident which, unfortunately, resulted in a fatality.

The Code of West Virginia is ambiguous at best in its definition of allowable distance from station to mine. Though this distance is limited by federal regulations, the difference in regulations between Federal and State not only allows for different interpretations, it makes inspectors reluctant to write violations in this area (see attachment).

Another important section in this regulation deals with mine rescue programs. When an emergency occurs, it is important that all information pertaining to the subject mine be on file and readily available upon demand. This regulation will require a mine rescue program to be kept on file at each rescue station, mine sight and at the regional Miners Health, Safety and Training office. This will allow

Page Two
Division of Miners Health, Safety and Training

rescue teams to review program information at practice sessions, and clarify questions prior to any actual emergency.

Though CFR-49 does not limit the number of mines that can be covered by a rescue station, our regulation will limit coverage to a maximum of thirty-five (35) mines. This Division feels that this limit is the only way that adequate mine rescue coverage can be achieved. At present, one station is providing coverage to over 140 mines. Coverage this sparse can in no way be adequate. This regulation will not force companies to purchase mine rescue equipment, however, it will make coverage mandatory through an established, certified station.

Much of the language found in this regulation was taken from CFR-49. With Safety Instructors' salaries and all expenditures pertaining to their jobs 100% federally funded through the Mine Safety and Health Administration, compliance with federal standards is of utmost importance.



STATE OF WEST VIRGINIA

DIVISION OF ENERGY
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348 2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

June 11, 1991

Mr. David Tincher
Assistant Director of Purchasing
Division of Finance & Administration
Capitol Complex
Room E-110
Charleston, West Virginia 25305

Dear Mr. Tincher:

As per our conversation on June 11, 1991, I am writing to explain our dilemma concerning the maintenance of state-owned mine rescue equipment.

The Division of Energy owns in excess of one-hundred (100) underground breathing apparatuses. These apparatuses are strategically located throughout the state to assist the coal industry in providing rescue coverage to the backbone of the industry - the coal miner.

Through both state and federal funding cutbacks, it is becoming increasingly difficult to maintain this equipment at a state of readiness should an emergency occur. We feel that the mining industry should bare the expense of maintaining this equipment, as opposed to the general taxpayers. The money normally used to maintain this equipment would go into training, hopefully making the mining industry a safer place to work.

Therefore, we are requesting permission to allow the industry take possession and maintain this equipment through an agreement that would allow the Division of Energy to retain ownership.

Should you have any questions or if I can be of any assistance, feel free to call me at 348-3500. Thank you for your attention to this matter.

Sincerely,

Dana Martin

DM:cc

cc: William "Bolts" Willis
Bart B. Lay, Jr.



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

TO: Dana Martin
Division of Energy

FROM: David Tincher, Assistant Director
Administrative Services Section
Purchasing Division *DT*

SUBJECT: State-Owned Mine Rescue Equipment

DATE: June 17, 1991

After receiving your June 11, 1991 letter confirming our prior conversations, I discussed this subject with Department of Administration Attorney Diana Stout. Your request to retain title to this equipment, place it at the mine sites, and allow the individual mines to maintain it, does not appear to violate any Surplus Property laws, regulations or procedures. However, the additional issues brought up by telephone after your June 11th letter concerning how the individual mines submit contributions to pay for the maintenance may raise other questions. We suggest that you have this issue clarified by the Attorney General's Office.

If either of us can provide additional information, please contact us at your convenience.

DT/dw

cc: Diana Stout
Ron Riley

This agreement, between _____, herein referred to as the administrator, and the West Virginia Office of Miners' Health, Safety, and Training, entitles _____ mine rescue station to participate in the state mine rescue station network; with all rights and privileges set forth in 22A-1A-32 and 22A-1A-33 of the West Virginia Code.

For the sum of one dollar (\$1.00) per year, the administrator agrees to take possession of the state mine rescue equipment at _____ mine rescue station. The administrator also agrees to maintain said equipment and to manage said station pursuant to all applicable state and federal laws and regulations.

It is further understood that not more than thirty-five (35) mines will be eligible for coverage through an agreement with the administrator. Qualifying mines must be in the vicinity of the station. The total travel time from the team member's home or place of work, to the station and to the mine, shall not exceed the two (2) hour ground travel limit. Said agreement must be approved by the Director of the office of Miners' Health, Safety, and Training. The Director shall have the right to designate which State station must provide coverage to a mine that qualifies under the aforesaid restrictions.

The office of Miners' Health, Safety, and Training shall retain title and/or ownership of all equipment covered by this agreement. Nothing in this agreement shall be

construed to be opposing or in conflict with state laws and regulations under which the administrator has taken possession of state-owned equipment.

It is further understood that either party of this agreement may terminate said accord by notifying the other in writing by certified mail thirty (30) days prior to the termination date.

Dated: _____

By: _____
Representative of Miners'
Health, Safety, and Training

By: _____
Administrator

Witness: _____

Title: _____

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS
29th day of October, 19 91.

BY: Daune Wayfield
Attorney General
DEPUTY ATTORNEY GENERAL

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA,

STONE COAL COMPANY,

PETITIONER,

VS:

CIVIL ACTION NO. 90-C-498

WEST VIRGINIA DIVISION
OF ENERGY, Section of
Health, Safety, and
Training,

RESPONDENT.

ORDER

I have reviewed the entire file in the above styled case and have made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The petitioner is the operator of the No. 8 mine in Raleigh County, West Virginia, under Permit No. U-3024-88.
2. On May 16, 1990, Dennis Allen, DOE district inspector issued a Notice of Violation to Stoney Coal Company pursuant to Chapter 22A, Article 1A, Section 33 of the West Virginia Code for failure to have a mine rescue team with the members working in the general area of the mine although the mine employs in excess of fifty (50) persons.

3. Inspector Allen testified that verification of the number of employees was made by examining inspection and tonnage reports that came in at the end of the month. Thereafter, the petitioner stipulated that there were more than fifty (50) employees working in the mine.

4. From Pineville, West Virginia, to Justice, West Virginia, which is the residence of one of the team members, it is a thirty-two minute drive. From Pineville, West Virginia, to Beckley, West Virginia, it is a thirty-five minute drive. With a twenty minute assembly time, the time to assemble and travel will be somewhere in the neighborhood of an hour and a half, but for the purpose of this proceeding, the Court will take 1 1/2 to 2 hours as the time to travel.

CONCLUSIONS OF LAW

1. Petitioner's request for a review of the Notice of Violation was filed in a timely manner as required by W. Va. Code 22A-1A-15(a)(1).

2. Petitioner was given adequate notice of the time and place of the hearing as required by W. Va. Code 22A-1A-15(a)(2).

3. The Notice of Violation was properly written in accordance with the provisions of W. Va. Code 22A-1A-13(b).

4. W. Va. Code 22A-1A-33 states, in part, that it shall be the duty of any mine operator employing fifty or more employees to have available for mine rescue work a trained

mine rescue team, the members of which shall work in the general area of the mine. However, there is no assistance with regard to the statute as to what is the "general area of the mine". The only state pronouncement with regard to this statute is an attorney general's opinion dated October 9, 1979, that states there should be no substantial time lag between any disaster and the arrival of the mine rescue team. There is no case law with regard to what is the "general area of the mine". The only assistance this Court has is a copy of Title 30, Part 49 of the Code of Federal Regulations that states in §49.2, that every operator of an underground mine shall enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground. Apparently, the petitioner established this at the hearing. §49.2(f) states that no mine served by a mine rescue team shall be located more than two hours ground travel time from the mine rescue station at which the rescue team is associated. The appellant comes within that provision and I personally do not believe that two hours is a proper time period. It should be much shorter, nonetheless that is the only regulation available upon which the Court can make a determination. The statute in the section on mines and minerals of the West Virginia Code is so vague that it is impossible for a mine operator to know what is the "general area of the mine" and he can only rely on the federal standard

to help him make this determination. But it is not this Court's purpose to determine whether or not two hours is adequate. The purpose is to determine whether or not Stoney Coal Company is in violation of a provision of the West Virginia Code. As I stated, the provision is vague and gives no direction to the mine operator and in my personal opinion the two hours time allowed by the federal regulations is far too long for a mine rescue team to appear at a disaster.

Therefore, it is ORDERED that the recommendation of the hearing examiner for the Department of Energy with regard to Notice of Violation No. 1, dated May 16, 1990, be reversed.

Date: March 7, 1991

ENTER:



JOHN S. HRKO, JUDGE

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing the Standards for Mine Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

Type of Rule: Legislative Interpretive Procedural

Agency: Office of Miners' Health, Safety and Training

Address: 1615 Washington Street, East, Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost IF RULE IS NOT APPROVED	\$ 100,000	\$	\$ 100,000	\$ 100,000	\$ 100,000
Personal Services					
Current Expense					
Repairs & Alterations	90,000		90,000	90,000	90,000
Equipment	10,000		10,000	10,000	10,000
Other					

2. Explanation of above estimates:

The Miners' Health, Safety and Training Section has used Federal funding for the purchase and maintenance of mine rescue equipment, with MSHA's approval. MSHA has now directed this Federal money to training. Therefore, equipment purchases and maintenance will require State General Revenue funds if this rule is not approved.

3. Objectives of these rules:

This regulation will establish standards for mine rescue stations, rescue programs, and mandatory coverage for all mines. It will also provide a means for each station to generate the funds necessary to maintain the equipment as prescribed by the manufacturer. Without mandatory coverage most mines will not voluntarily pay for coverage. Since this service is directly provided to their mine, they should be responsible for any expenditures incurred for the operation and maintenance of the station.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Should this regulation not be approved, the cost to the Miners Health, Safety, and Training Section will be approximately 100,000 per year to properly maintain the mine rescue stations.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

This regulation will have little or no economic impact of the mining industry. Coverage fees should run approximately \$1,000 dollars per year, a small amount considering complete mine rescue station cost approximately \$200,000 dollars each.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: October 31, 1991

Signature of Agency Head or Authorized Representative

Stephen F. Webber

Please find attached copies of correspondence and the approved contract that will allow mine rescue associations to take possession of State owned equipment. This contract will allow each association a means to generate the funds necessary to maintain their station.

DATE: October 31, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Miners' Health, Safety and Training

EMERGENCY RULE TITLE: Rules and Regulations Governing the Standards for Mine
Rescue Stations, Rescue Programs, and Mandatory Coverage for All Underground Mines

1. Date of filing: October 31, 1991

2. Statutory authority for promulgating the emergency rule:

122A-7-8

3. Date of filing of proposed legislative rule: Oct. 31, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

This emergency rule will adopt new language

5. Has the same or similar emergency rule previously been filed and expired?

NO

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare

Mine rescue stations are not being maintained at a state of readiness.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

No time limit has been established, but this regulation will bring us into

compliance with CFR 30 Part 49. This program is funded 100% by MSHA.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Due to the lack of maintenance, many rescue teams would not be able to respond

to a mine emergency. This regulation will establish standards for mine rescue

stations that will allow us to insure readiness should an emergency occur.

At this time, only those mines employing 50 or more are required to provide

mine rescue coverage at their mine. With increased automation in the mining industry, only 20% of the active mines in West Virginia are required to have coverage; 80% of the active mines employ 49 or less, and by State law, are not required to have mine rescue coverage.

With fatalities on the rise, we must be prepared to respond if an emergency occurs.