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April 5, 2004

Mr. Marvin Nichols, Director
Office of Standards, Variances and Regulations MSHA
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209

Dear Mr. Nichols:

These comments are submitted on behalf of the members of the Nevada Mining Association (NvMA) in response to the limited re-opening of the comment period that appeared in the Federal Register on February 20, 2004 (69 FR, page 7881). We appreciate this opportunity to provide comments on this important regulatory proceeding.

Throughout the entirety of this proceeding we have maintained a fundamental position – that the agency should delete the final 160 microgram standard that is to become effective January 2006. We believe that two of the three documents that the agency has submitted to the record through this proceeding provide support for deleting the 160 microgram standard.

Stillwater Isolated Zone Study

The first document (Phase 1) is the results of in-mine testing of selected diesel particulate matter (DPM) control technologies at an underground mine. The tests were conducted at the Stillwater Mine in Nye, Montana.

Stillwater is an active member of the NvMA and we would like to thank both them and the National Institute for Occupational Safety and Health (NIOSH) for their efforts on behalf of the underground metal/nonmetal mining industry. While all users of underground diesel powered equipment have initiated processes to reduce dpm concentrations, Stillwater's contribution to developing an overall understanding of the difficulties that can be encountered is invaluable. Hopefully, the knowledge gained during the testing at the Nye Mine will enable all parties to understand the difficulties related to designing compliance strategies.

The objective of the study was to determine the "viability of DPF systems and establish confidence in their performance." The study accomplished this objective as the systems tested did, for the most part, perform as designed and advertised. The design of the study, however, replicated a laboratory type environment that did not represent actual mine conditions. There were also

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cases documented in the study that did not perform as expected and did not achieve the expected reductions in a controlled environment.

Phase 2, which was designed to "assess the effectiveness of diesel particulate filters in controlling the exposure of underground miners in actual production scenarios," is obviously much more relevant for mine operators. Unfortunately the report was not available for the agency to include in the February 20th publication date of the reopening notice. NvMA urges the agency to include the results of the Phase 2 testing.

The Phase 2 scenario produced much different results than the laboratory like conditions of Phase 1. Many systems failed and had performances well below that obtained during the isolated zone testing, as well as those advertised by manufacturers. The following quote taken from the Phase 2 study further supports this position:

" the efficiencies for the DPF systems achieved in the mining studies did not always agree with the efficiencies reported in the laboratory studies. These studies also demonstrated that considerable effort is needed to select and optimize DPF systems for individual underground mining applications."

In addition, only a select few pieces of equipment that DPF systems could be retrofitted on were able to be tested. The majority of Stillwater's fleet cannot be retrofitted because the controls are not available.

NvMA believes that the results of the production zone study conducted at the Nye mine represents the "latest scientific data" and demonstrates that the final standard of 160 micrograms should be deleted from the rule.

<u>Dr. Chase Health Effects Review</u>

MSHA chose to promulgate the DPM rule without waiting for the results of a multi-million dollar study being conducted by the National Cancer Institute and NIOSH. Preliminary results are available and have been reviewed by Dr. Gerald Chase. His review "Characterization of Lung Cancer in Cohort Studies and a NIOSH Study on Health Effects of Diesel Exhaust in Miners," also supports deletion the 160 microgram standard.

Since promulgation of the final DPM rule for underground metal/nonmetal mines, the study has advanced and last Fall the first study results were made publicly available. In his analysis of the data made available by the study sponsors Dr. Gerald Chase found that:

the "number and pattern of lung cancer deaths reported … are in agreement with lung cancer deaths from the general population … and less than what NIOSH appears to have predicted."

The ramifications of Dr. Chase's conclusion cannot, and should not, be ignored.

Ironically, the two premises that MSHA used for promulgating the rule to begin with are: (1) the transitory, reversible health effects of exposure to dpm; and, (2) the long-term impacts

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that may result in an excess risk of lung cancer for exposed workers. Dr. Chase's analysis of the limited data that the study sponsors have made available, confirms our earlier concerns questioning the scientific foundation upon which MSHA based the DPM rule.

The NIOSH Respirator Report

The final item added to the record is a report prepared by Bureau of Labor Statistics and Centers for Disease Control and Prevention/NIOSH providing the results of a voluntary survey of respirator use and practices in private industry during the period August 2001 – January 2002. The report provides general information on respiratory protection use and practices across all industry, including mining. While the data may be informative, its voluntary basis, limited validation, and lack of detail, renders it of little use in any effort to change the existing respirator standards. However, the report does provide broad support for MSHA's proposal to permit the use of personal protective equipment for DPM exposures, in a manner consistent with existing regulations and policy.

The analysis conducted by Dr. Chase and the Stillwater report lead to the inevitable result that we have long maintained – that there is no scientific or technologic basis for the final 160 microgram standard, and therefore it must be deleted.

Thank you for this opportunity to provide these comments.

Sincerely,

Jonathan M. Brown
Director, Environmental & Regulatory Affairs

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